

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 639.

**THE ANCHOR LINE (HENDERSON BROTHERS), LTD.,
APPELLANT,**

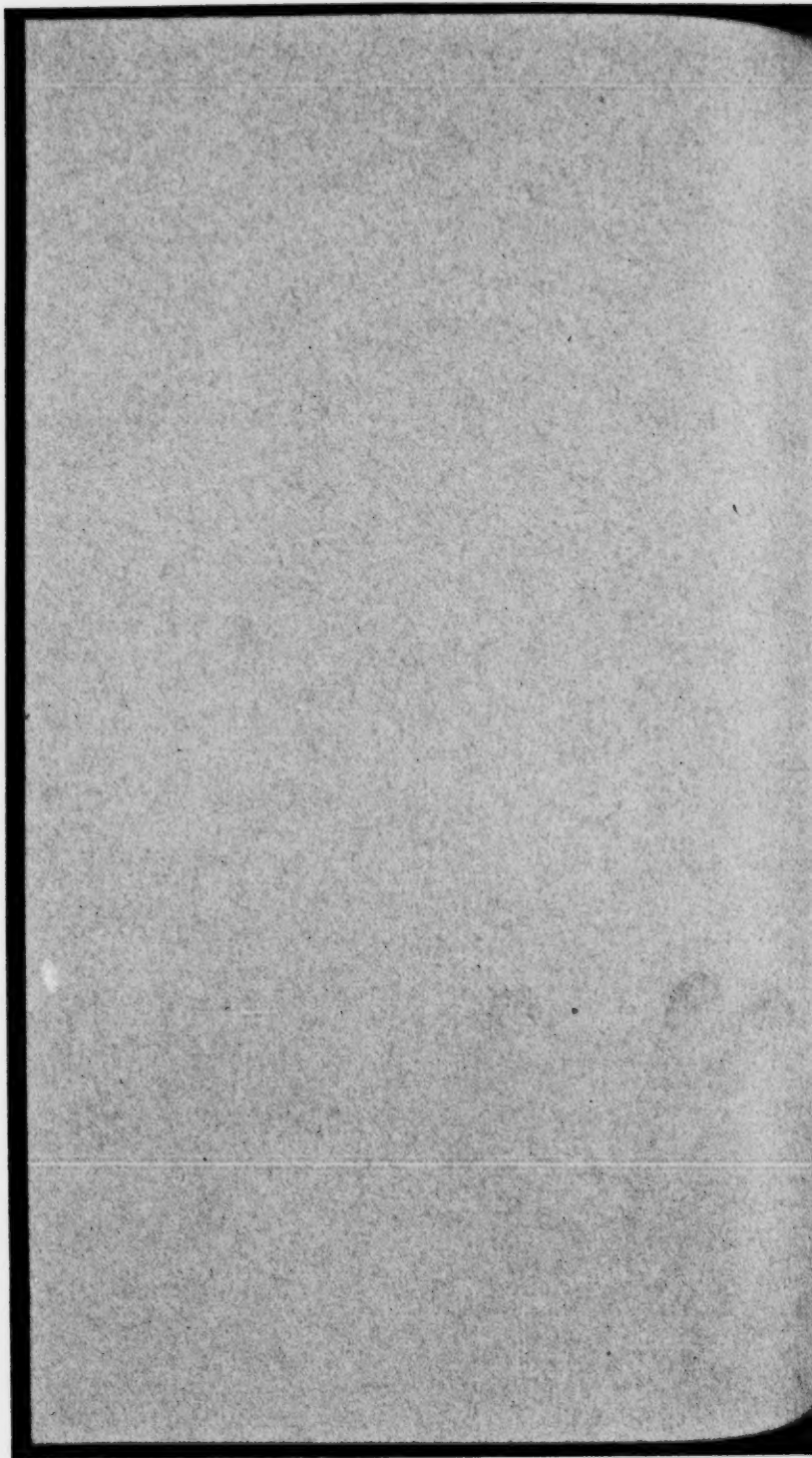
vs.

**GEORGE W. ALDRIDGE, COLLECTOR OF CUSTOMS FOR
THE PORT OF NEW YORK.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.**

FILED DECEMBER 9, 1921.

(28,594)



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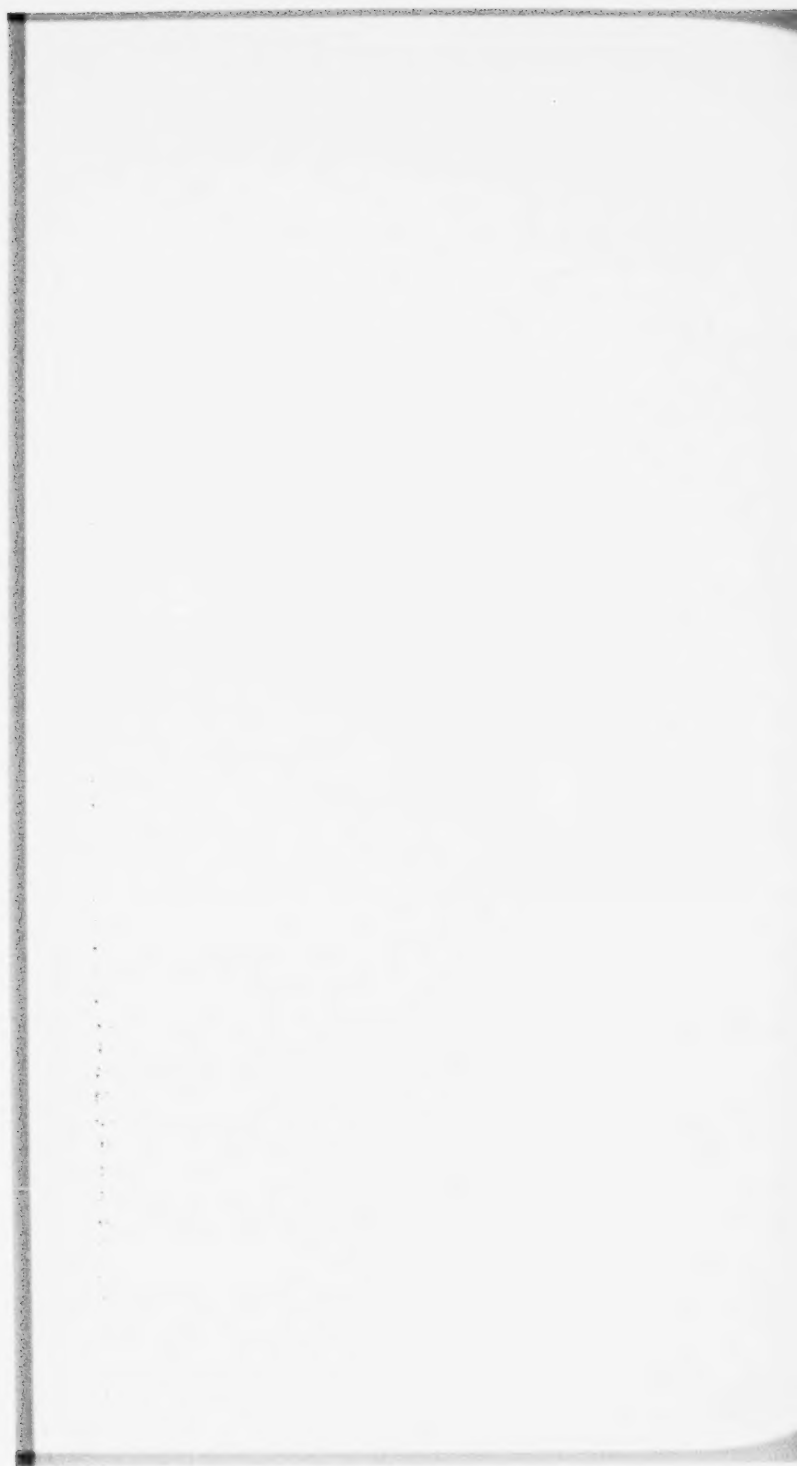
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1 The President of the United States of America to George W. Aldridge, Collector of Customs for the Port of New York, Greeting:

You are hereby commanded to appear before the Judges of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, to answer a bill of complaint exhibited against you in the said Court in a suit in Equity, by The Anchor Line (Henderson Brothers) Ltd., and to further do and receive what the said Court shall have considered in this behalf; and this you are not to omit under the penalty on you of Two Hundred and Fifty Dollars (\$250).

Witness, Honorable Learned Hand, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, on the 19th day of July in the year One Thousand Nine Hundred and twenty-one, and of the Independence of the United States the One Hundredth and Forty-sixth.

ALEX. GILCHRIST, JR.,
Clerk.

LORD, DAY & LORD,
Plaintiff- Sol'r.

The defendant is required to file his answer or other defense in the above cause in the Clerk's Office of this Court on or before
2 the twentieth day after service hereof excluding the day of said service; otherwise the bill aforesaid may be taken pro confesso.

[SEAL.] ALEX. GILCHRIST, JR.,
Clerk.

3 In the District Court of the United States for the Southern District of New York.

In Equity.

THE ANCHOR LINE (HENDERSON BROTHERS), LTD., Complainant,
against

GEORGE W. ALDRIDGE, Collector of Customs for the Port of New York, Defendant.

To the Honorable the Judges of the District Court of the United States for the Southern District of New York, Sitting in Equity:

The complainant, Anchor Line (Henderson Brothers) Ltd., a corporation, brings this, its Bill of Complaint, against the above named defendant and respectfully shows unto this Honorable Court as follows:

I. Complainant, Anchor Line (Henderson Brothers) Ltd., is a corporation duly organized and existing under the laws of the

United Kingdom of Great Britain and Ireland, with its principal place of business at Glasgow, Scotland. Complainant is informed and verily believes, and therefore alleges, on information and belief, that the defendant George W. Aldridge is the Collector of
 4 Customs for the Port of New York, and that said defendant is by law charged with the duty of enforcing the terms and the provisions of the Acts of Congress and the regulations and decisions of the Secretary of the Treasury herein below referred to, within that portion of the Port of New York wherein the complainant desires to tranship certain wines and intoxicating liquors, as hereinafter set forth.

II. This is a suit of civil nature, arising under the Constitution, laws and treaties of the United States. The matter in controversy exceeds the sum of Three Thousand Dollars (\$3,000) in value, exclusive of interest and costs.

III. Complainant was incorporated in 1899 under the laws of the United Kingdom of Great Britain and Ireland for the purpose of carrying on a steamship business and since that time has been engaged in the business of transporting, as a common carrier, passengers and cargo for hire on the high seas and, in transacting such business, the complainant maintains and operates a fleet of steamships which sail from ports of the United Kingdom to ports of
 Europe, Canada and the United States.

5 All of said steamships are British vessels built and registered in Great Britain and not in the United States and flying the British flag.

Complainant succeeded to the extensive business and the property and good will of, and theretofore used therein by, Handyside & Henderson from the year 1856 until sold by them to Henderson Brothers, who in turn sold said business and property to the complainant in 1899 which has ever since owned, managed, carried on and conducted said business.

Complainant has capital stock of the par value of £575,000, divided into 32,500 five and one half per cent, cumulative preference shares of the par value of £10 each, and 25,000 ordinary shares of the par value of £10 each, all of which stock has been duly issued for value and is now outstanding.

IV. Complainant further alleges as follows:

1. It is the owner of six steamships worth over \$6,000,000 plying regularly and frequently between Glasgow and New York; it leases a pier known as Pier No. 64, North River, New York City.

2. It has during the past three years transported large quantities of wines and intoxicating liquors from Glasgow to the port
 6 of New York, where such liquors were transhipped to vessels destined for the West Indies and other countries outside of the jurisdiction of the United States; the quantity of such wines and intoxicating liquors so transported and the amount of revenue

derived from such transportation were as set forth in Exhibit A hereunto attached and reference thereto is prayed.

3. That a substantial part of complainant's revenue is derived from the transportation of wines and intoxicating liquors from Glasgow and other ports in the United Kingdom to the port of New York, not, however, to be landed in New York, but to be transhipped in the port of New York to steamers destined to ports outside the United States and that such business is carried on in competition with other carriers.

V. Section 3005 of the Revised Statutes, as amended, provides as follows:

"All merchandise arriving at any port of the United States destined for any Foreign country, may be entered at the Custom House and conveyed, in transit, through the territory of the United States without the payment of duties, under such regulations as to examination and transportation as the Secretary of the Treasury may prescribe."

VI. For many years prior to and since the adoption of the so-called National Prohibition Act on October 28, 1919, complainant has been permitted to transship at the port of New York liquors shipped from ports outside of the United States, for transshipment in the port of New York to vessels destined for ports outside of the United States after obtaining permits at the Custom House, said permits being issued by the Collector of Customs under the "regulations" prescribed by the Secretary of the Treasury, a copy whereof is hereunto attached and marked Exhibit B, and reference thereto is prayed.

VII. The wines and intoxicating liquors hereinabove referred to were transhipped either by bonded lighter or bonded truck, and no wines and intoxicating liquors were ever lost while being so transferred.

VIII. Under date of July 8th, 1921, the Secretary of the Treasury caused to be transmitted the following telegram to the Collectors of Customs relating to the transshipment of liquor.

"Collector of Customs Juneau, Alaska, New Orleans, La., Nogales, Ariz., New York, N. Y., Buffalo, N. Y., Wilmington, N. C., Chicago, Ill., Cleveland, O., Bridgeport, Conn., Portland, Ore., Pembina, No. Dak., Philadelphia, Pa., Duluth, Minn., San Juan, Porto Rico, El Paso, Tex., Providence, R. I., Tampa, Fla., Rochester, N. Y., Galveston, Tex., Port Arthur, Texas, San Antonio, Tex., San Francisco, Cal., Savannah, Ga., Los Angeles, Cal., Honolulu, Hawaii, San Diego, Cal., Portland, Me., Charleston, S. C., Baltimore, Md., Ogdensburg, N. Y., Boston, Mass., St. Albans, Vt., Detroit, Mich., Norfolk, Va., St. Paul, Minn., Seattle, Wash., Mobile, Ala., Milwaukee, Wis., Great Falls, Mon.:

Pursuant Attorney General's opinion June thirtieth affirming previous opinion February fourth you are directed to refuse transportation and exportation entries for all intoxicating liquors your district not covered by prohibition permit. This order is to be effective on all such liquors shipped from foreign countries on and after July fifteenth, nineteen twenty-one. Such liquors shipped on or after that date should be seized and forfeited in usual manner under customs regulations.

(Signed)

J. H. MOYLE.

Complainant is advised by counsel and verily believes that such directions of the Secretary of the Treasury were and are arbitrary, unauthorized and void, because they purport and attempt to limit and restrict the plaintiff's right to have liquor arriving on complainant's vessels at the port of New York, destined to a foreign country, transshipped to ships destined to ports outside of the United States.

IX. The Attorney General, in response to a request for an opinion as to whether the Eighteenth Amendment of the Constitution of the United States and the National Prohibition Act prohibited or affected in any way "in transit" shipments of liquor for beverage purposes touching at the ports of or moving through the United States when originating in and destined for foreign countries under the provisions of Section 3005 of the Revised Statutes, as amended, advised the Secretary of the Treasury that Section 3005 of the Revised Statutes did not apply to intoxicating liquors for beverage purposes and that the National Prohibition act prohibits "in transit" shipments of such liquors touching at the ports of or moving through the United States, though the same originate in and are destined to foreign countries.

X. Complainant is advised by counsel and verily believes that if the interpretation placed upon the National Prohibition Act by the opinion of the Attorney General as aforesaid is correct, it renders the said act unconstitutional and void for the reason that the National Prohibition Act was adopted by the Congress in reliance upon and in the exercise of the powers given the Congress by the Eighteenth Amendment to the Constitution of the United States and that said amendment only authorizes the Congress to regulate the transportation of intoxicating liquors when they are to be used for beverage purposes in the United States and territory subject to the jurisdiction thereof; that the said amendment does not give the Congress power to regulate the transshipment of intoxicating liquors in the ports of the United States when intoxicating liquors are not landed in such ports but are transshipped there as an incident to their transportation to countries outside the United States and hence Section 3005 of the Revised Statutes still permits the transshipment in a port of the United States of shipment of wines and intoxicating liquors originating in and destined to a foreign country.

XI. Complainant is also advised by counsel and verily believes said interpretation placed upon the National Prohibition Act by the opinion of the Attorney General is erroneous and void for the reason that the transshipment in the ports of the United States of shipments of wines and intoxicating liquors originating in and destined to a foreign country is not transportation, or exportation as forbidden by the Eighteenth Amendment to the Constitution of the United States or in the so-called National Prohibition Act because said wines and intoxicating liquors are not to be used for beverage purposes within the United States, and hence Section 3005 of the Revised Statutes still permits the transshipment in a port of the United States of wines and intoxicating liquors originating in and destined to a foreign country.

XII. Complainant is advised by counsel and verily believes that said construction placed upon the National Prohibition Act by the Attorney General is illegal, erroneous and void in that it violates the Treaties between the United States and Great Britain, particularly the treaty dated May 8, 1871, ratified June 17, 1871 and proclaimed July 4, 1871, and particularly Article XXIX thereof, and hence Section 3005 of the Revised Statutes still permits the transshipment in the ports of the United States of shipments of wines and intoxicating liquors originating in and destined to a foreign country.

The material provisions of said article of the Treaty hereinbefore mentioned are as follows:

"It is agreed that, for the term of years mentioned in Article XXXIII, of this treaty, goods, wares, or merchandise arriving at the ports of New York, Boston and Portland and any other ports in the United States which have been or may, from time to time, be specifically designated by the President of the United States and destined for her Britannic Majesty's possessions in North America, may be entered at the proper custom house and conveyed in transit, without the payment of duties through the territory of the United States, under such rules, regulations and conditions for the protection of the revenue as the government of the United States may from time to time prescribe: and under like rules, regulations and conditions, goods, wares or merchandise may be conveyed in transit, without the payment of duties, from such possessions through the territory of the United States for export from the said ports of the United States."

XIII. The complainant has, in the course of its business, contracted with Gilmour, Thompson & Company of Glasgow, Scotland, to transport five cases of whiskey, which is an intoxicating liquor, from Glasgow to Hamilton, Bermuda, to be there delivered to Burrows & Company, agents for Gilmour, Thompson & Company at that place.

Bermuda is a colony and a possession of the Kingdom of Great Britain and Ireland and subject to the jurisdiction and laws of the Kingdom of Great Britain and Ireland.

Said whiskey has been shipped and is being transported on the S. S. "Cameronia," a vessel belonging to complainant and is covered by a bill of lading to said consignees at Hamilton, Bermuda.

Said steamship "Cameronia" sailed from Glasgow, Scotland on July 17, 1921 and is now on the high seas bound for the port of New York.

13 Said liquor is to be transhipped in the port of New York for carriage to Hamilton, Bermuda, from the S. S. "Cameronia" to a steamship belonging to the Quebec Line, a corporation organized and existing under the laws of the Dominion of Canada and maintaining and operating a fleet of steamships. None of said steamships is registered in the United States and all of said steamships fly the British flag.

A bill of lading has also been issued for the carriage of such whiskey on the S. S. "Cameronia" from Glasgow to New York which calls for the delivery of said whiskey to the Quebec Line to be carried to Bermuda.

XIV. None of said whiskey to be so transported is to be used for beverage purposes within the United States or territory under the jurisdiction thereof, and it is to be brought to the port of New York only for the purpose of transshipment there, as aforesaid.

XV. The complainant alleges that defendant, George W. Aldridge, as directed by said telegram of the Secretary of the Treasury, has threatened to seize and forfeit the said whiskey now in transportation on the S. S. "Cameronia," as aforesaid, and has stated he will refuse to issue the permits for transshipment in the port of New York as provided for in the regulations under Section 3005 of the

Revised Statutes heretofore referred to. Complainant verily
14 believes that said defendant, George W. Aldridge, will seize and forfeit said whiskey and will refuse to issue said permits.

Said George W. Aldridge also threatens to seize any other wines and intoxicating liquors which complainant shall bring into the port of New York for transshipment at the port of New York to foreign ports and has stated that he will not again issue any permits for the transshipment of wines and intoxicating liquors within the port of New York.

XVI. Complainant alleges that if it should be deprived of the right to transship liquor through the port of New York pursuant to the terms of Section 3005 of the Revised Statutes as amended, or if the terms and provisions of the so-called National Prohibition Act as construed by the Secretary of the Treasury should be held to have repealed Section 3005 of the Revised Statutes, a large part of its valuable business and good will would be impaired and depreciated and future profits from such portion thereof would be rendered impossible. The value of its property as a going concern would be diminished to the great and irreparable injury of the complainant and such injury and damage would be incapable of admeasurement

and adjudication in an action at law and likewise that if such
15 wines and intoxicating liquors were seized, such seizure and prohibition from shipping through the port of New York

would compel it to cease the transaction of the business of transporting wines and intoxicating liquors between Glasgow and New York for transshipment to British possessions in the West Indies, South America, and other ports outside of the United States, to its irreparable injury.

XVII. Complainant is advised by counsel, and therefore avers, that according to the true intent and meaning of said National Prohibition Act, said Section 3005 of the Revised Statutes was not in any way amended or repealed and that the National Prohibition Act does not apply to shipments of liquor for beverage purposes touching at the ports of the United States when originating in and destined to foreign countries, but that the provisions of Section 3005 of the Revised Statutes are still in full force and effect and that the complainant is entitled to transship said whiskey at the port of New York. As more fully appears from said telegram of the Secretary of the

16 Treasury, said Secretary of the Treasury has construed the said Act of Congress as forbidding the transshipment of liquor originating in and destined for foreign countries and not intended to be used for beverage purposes within the United States. Notwithstanding the fact that such interpretation of the Act of Congress is erroneous, unauthorized and void and that it exceeds the authority conferred upon the Secretary of the Treasury by the provisions of said Act, and notwithstanding the fact that said National Prohibition Act, if it purports to prohibit the transportation of liquor not intended to be used for beverage purposes within the United States, is unconstitutional and void for the reasons hereinabove stated, it is nevertheless the intent and threat of the defendant, George W. Aldridge, his agents and subordinates, acting in pursuance of said unauthorized directions of the Secretary of the Treasury, to seize the whiskey now being transported on S. S. "Cameronia" for transshipment as aforesaid and any other wines and intoxicating liquors brought to the port of New York for transshipment, and to enforce against the complainant, its officers, agents and servants, various pains and penalties including fines and imprisonment, and various forfeitures of property provided by the Acts of Con-

17 gress and regulations and thus involve the complainant, its officers, agents and servants, in numerous suits and by such threats to prevent complainant, its employees and servants, from carrying out its contracts to transship liquor in the port of New York and thus deprive the complainant of its business; all to the irreparable damage of the complainant, and such injury and damage would be incapable of admeasurement and adjudication in an action at law. Furthermore, complainant would be involved in numerous suits if it was forced to bring an action at law to recover back each shipment of liquor so seized. Complainant alleges that in order successfully to carry on its business of transporting liquor for transshipment at the Port of New York, it is necessary and essential for it to make contracts for transportation of wines and liquors and that such contracts for the transportation must be made a long time prior to the commencement of the shipment; that unless the complainant can

immediately procure from this Honorable Court relief in the premises, no such contract for shipment can reasonably or safely be made:

- that there will be in that event a cessation of the said business;
 18 for an indefinite and probably considerable time; such cessation of business will involve irreparable damage to it in that it will destroy a considerable part of its business and cause a loss of its profit and tend to the destruction and loss of its trade and custom.

XVIII. For as much, therefore, as complainant is without remedy in the premises, except in a court of equity and to the end that it may obtain from this Honorable Court the relief to which it is entitled, it respectfully prays that the above named defendant, George W. Aldridge, be directed to make full, true and perfect answer to this Bill of Complaint, but not under oath, an answer under oath being hereby expressly waived, and that the said defendant, his agents, servants, subordinates and employes and each and every one of them, be enjoined and restrained from in any manner enforcing or attempting to enforce, or cause to be enforced, against the complainant, its officers, servants and employes, or any of them, any of the pains, penalties or forfeitures, provided in and by the aforesaid Acts of Congress or any laws or regulations of the Secretary of the

- Treasury aforesaid, and from arresting and prosecuting the
 19 complainant, its officers, agents, servants, or employes, or any of them for or on account of any alleged violation by them or any of them of the terms of the Acts and provisions of the said Act of Congress, on the ground or claim that transshipping liquor transported through the ports of the United States although shipped from and destined to foreign countries, under the provisions of Section 3005 of the Revised Statutes, is contrary to law.

Complainant further prays that the defendant, his agents, servants, subordinates and employes be restrained and enjoined from refusing to issue to the complainant, its agents, officers, servants, employes or any of them the permits under Section 3005 of Revised Statutes heretofore referred to; and that the complainant have such other and further relief as to the court may seem just and equitable in the premises.

Complainant further prays that it be granted a restraining order and preliminary injunction pending the final hearing and decision of this cause whereby the defendant, his agents, servants, subordinates and employes and each and every one of them will be enjoined and restrained as heretofore prayed, and that upon final hearing the said injunction be made perpetual.

Complainant further prays that a writ of subpoena be issued
 20 herein directed to said defendant, George W. Aldridge,
 commanding him on a day set to appear and answer the
 amended bill of complaint herein.

ANCHOR LINE (HENDERSON
 BROTHERS), LTD.,

By R. H. BLAKE,
Agent.

LORD, DAY & LORD,
Solicitors for Complainant.

25 Broadway, New York City.

LUCIUS H. BEERS,
 FRANKLIN B. LORD,
Of Counsel for Complainant.

21 STATE OF NEW YORK,
County of New York, ss:

On this 18th day of July, 1921 before the undersigned, a Notary Public, duly commissioned and sworn, appeared R. H. Blake who being duly sworn deposes and says: That he is an agent of and for The Anchor Line (Henderson Brothers) Ltd., the complainant in the above entitled suit; that he has read the foregoing Bill of Complaint and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated upon information and belief, and as to those matters he believes them to be true.

R. H. BLAKE.

EMILIO TRIPPITELLI,
Notary Public, Kings County.

Certificate Filed in New York County.

22 EXHIBIT A.

Liquor Transshipments from Glasgow, 1918-1920.

1918.

For British West Indies:

Whiskey	230 cases	
Wine	2 hogsheads	
Stout	40 cases	
Ale	25 cases, 5 barrels—Freight earned.....	162

For Cuba, Mexico, and S. America:

Whiskey	4,956 cases, 285 barrels	
	11 hogsheads	
Stout	275 cases	
Ale	375 cases, 7 barrels	
Beers	3,073 cases	
Wine	29 cases	
Gin	50 cases	
Bitters	10 cases—Freight earned	1,245
Total Freight		1,407

1919.

For British West Indies:

Whiskey	81 cases, 4 hogshends	
Gin	10 cases	
Ale	10 hogsheads—Freight earned	33

For Cuba, Mexico and S. America:

Whiskey	14,928 cases, 430 barrels	
	12 casks, 81 baskets	
Gin	466 cases	
Stout	690 cases	
Beer	435 cases	
Ale	10,948 cases—Freight earned	3,287
Total Freight		3,320

23

1920.

For British West Indies:

Beer	105 cases	
Whiskey	18 casks, 35 hogsheads	
	770 cases	
Ale	230 hogsheads, 40 cases	
Wine	10 cases—Freight earned	905

For Cuba, Mexico and S. America:

Whiskey	12,520 cases, 10 hogsheads	
Ale	3,864 cases	
Beer	9,560 cases	
Stout	65 cases	
Wine	627 cases, 5 hogsheads	
Gin	30 cases—Freight earned	4,012
Total Freight		4,917

1918	1,407
1919	3,320
1920	4,917
Total freight earned.....	9,644

24

EXHIBIT B.

Customs Regulations for Transshipment.

Article 694.

"Entry in Transit for Exportation.—Merchandise arriving at any port in the United States and shown by manifest, bill of lading, invoice or other satisfactory evidence to be destined to a foreign country, may be entered for shipment in transit through the United States or for immediate exportation without examination or appraisement. Invoices will not be required on such entries but entries must contain a proper description of the merchandise and its aggregate value and the marks and numbers on the packages.

Hides not disinfected according to U. S. regulations cannot be shipped in transit through the United States.

The name of the consignee who is to attend to the shipment at the port of exit must be noted on the entry.

Article 695.

Procedure at Port of Original Entry.—

(a) Foreign merchandise arriving by rail.

(b) When foreign merchandise in transit through the United States is transshipped at the port of first arrival for shipment in transit, an entry "in transit for exportation" (Customs Cat. No. 7510) must be filed at the port of entry in quintuplicate, two copies for use at the original port, one for use as a permit and two for use at port of destination. One of the latter will be returned as a cancellation certificate upon the exportation of the merchandise. Merchandise arriving on one vessel, consigned to one party, must be included in one entry in transit for exportation although destined to two or more places in a foreign country.

Upon the completion of the entry the same procedure will be followed as in the case of an entry for immediate transportation without appraisement.

A record of in-transit merchandise entered and forwarded for exportation at another port will be kept at port of first arrival on Customs Cat. No. 5047.

Procedure at Port of Exportation.—

(a) When merchandise is to be transshipped. Upon the arrival of the goods from another port at the port of exportation, the car-

rier will deliver to the collector the carrier's customs manifest (Customs Cat. No. 7512) accompanying the car. The customs seals on the car may be removed under authority from the collector and contents of cars delivered for transfer to exporting vessel upon presentation to the discharging inspector Customs Cat. No. 7513 properly filled out. This form is a combined permit to export bonded goods, transfer ticket and export declaration and will be prepared by the exporting consignee. The carrier will indorse the transfer ticket and the discharging inspector will note the delivery in his return on the carrier's manifest. The transfer ticket (Customs Cat. No. 7513) will accompany the merchandise to the exporting vessel and will be certified to by the lading inspector and delivered to vessel to be attached to the outward manifest prior to clearance.

If any part of a shipment is not exported on the vessel named (the inspector will note it and get new ticket for the goods diverted). There must be at all times in the possession of the inspector on the station at which bonded goods are awaiting exportation, a transfer ticket (Customs Cat. No. 7513) covering such goods. This form will be used in lieu of an export declaration on merchandise shipped under customs bonds and such merchandise must not be exported until this form has been signed by the lading inspector. After the clearance of the exporting vessels, this form will be detached from the outward manifest and forwarded to the Bureau of Customs Statistics at the Port of New York. The fact of exportation will be endorsed on the mail copy of the entry (Customs Cat. No. 7510) which will be returned to the port of first arrival as a cancellation certificate.

27 (b) When merchandise is not transhipped.

(c) If foreign merchandise in transit is brought in at, and exported from the same port, an entry "in transit for exportation" (Customs Cat. No. 7510) will be filed in triplicate, one copy for use as a permit. When merchandise is exported in the importing vessel without landing, the customs officer in charge of the vessel shall certify that the vessel was constantly under customs supervision and that merchandise entered for exportation was not discharged during her stay in port.

28 In the District Court of the United States for the Southern
District of New York.

In Equity.

22-52.

THE ANCHOR LINE (HENDERSON BROTHERS), LTD., Complainant,
against

GEORGE W. ALDRIDGE, Collector of Customs for the Port of New
York, Defendant.

On reading the annexed bill of complaint, let the defendant herein
show cause before this court at a Term thereof for the hearing of
motions to be held at the Post Office Building, Borough of Manhat-
tan, City of New York, on the 21st day of July, 1921, at Ten o'clock
in the forenoon, or as soon thereafter as counsel can be heard, why
an order should not be made restraining the defendant, his agents,
servants and subordinates during the pendency of this suit from
seizing, disturbing, removing, or in any way interfering with the
wines and intoxicating liquors, and any of them, now being trans-
ported from Glasgow, Scotland, on complainant's S. S.
29 "Cameronia", more particularly set forth in the bill of com-
plaint herein, and why the complainant should not have
such other and further relief as may be just.

Sufficient cause appearing, service of a copy of this order on the
defendant on or before the 19th day of July, 1921, shall be sufficient
service, and pending the determination of the motion arising on
this order to show cause, the defendant, George W. Aldridge, his
agents, servants and subordinates are hereby restrained from seizing,
disturbing, removing, or in any way interfering with said wines and
intoxicating liquors, or any of them.

Dated, New York, July 18th, 1921.

LEARNED HAND,
U. S. District Judge.

30 In the District Court of the United States for the Southern District of New York.

In Equity.

THE ANCHOR LINE (HENDERSON BROTHERS), LTD., Complainant,
against

GEORGE W. ALDRIDGE, Collector of Customs for the Port of New York, Defendant.

To the Honorable the Judges of the District Court of the United States for the Southern District of New York, sitting in equity:

The complainant, Anchor Line (Henderson Brothers) Ltd., a corporation, brings this, its amended bill of complaint, against the above named defendant and respectfully shows unto this Honorable Court as follows:

I. Complainant, Anchor Line (Henderson Brothers) Ltd., is a corporation duly organized and existing under the laws of the United Kingdom of Great Britain and Ireland, with its principal place of business at Glasgow, Scotland. Complainant is informed and verily believes, and therefore alleges, on information and
31 belief, that the defendant, George W. Aldridge is the Collector of Customs for the Port of New York, and that said defendant is by law charged with the duty of enforcing the terms and the provisions of the Acts of Congress and the regulations and decisions of the Secretary of the Treasury herein below referred to, within that portion of the Port of New York wherein the complainant desires to transship certain wines and intoxicating liquors, as hereinafter set forth.

II. This is a suit of civil nature, arising under the Constitution, laws and treaties of the United States. The matter in controversy exceeds the sum of Three Thousand Dollars (\$3,000) in value, exclusive of interest and costs.

III. Complainant was incorporated in 1899 under the laws of the United Kingdom of Great Britain and Ireland for the purpose of carrying on a steamship business and since that time has been engaged in the business of transporting, as a common carrier, passengers and cargo for hire on the high seas and, in transacting such business, the complainant maintains and operates a fleet of steamships which sail from ports of the United Kingdom to ports of Europe, Canada and the United States.

All of said steamships are British vessels built and registered in Great Britain and not in the United States and flying the
32 British flag.

Complainant succeeded to the extensive business and the property and good will of, and theretofore used therein by, Handy-side & Henderson from the year 1856 until sold by them to Hender-

son Brothers, who in turn sold said business and property to the complainant in 1899 which has ever since owned, managed, carried on and conducted said business.

Complainant has capital stock of the par value of £575,000, divided into 32,500 five and one half per cent, cumulative preference shares of the par value of £10 each, and 25,000 ordinary shares of the par value of £10 each, all of which stock has been duly issued for value and is now outstanding.

IV. Complainant further alleges as follows:

1. It is the owner of six steamships worth over \$6,000,000 plying regularly and frequently between Glasgow and New York; it leases a pier known as Pier No. 64, North River, New York City.

2. It has during the past three years transported large quantities of wines and intoxicating liquors from Glasgow to the port of New

York, where such liquors were transhipped to vessels destined for the West Indies and other countries outside of the jurisdiction of the United States; the quantity of such wines and intoxicating liquors so transported and the amount of revenue derived from such transportation were as set forth in Exhibit A hereunto attached and reference thereto is prayed.

3. That a substantial part of complainant's revenue is derived from the transportation of wines and intoxicating liquors from Glasgow and other ports in the United Kingdom to the port of New York, not, however, to be landed in New York, but to be transhipped in the port of New York to steamers destined to ports outside the United States and that such business is carried on in competition with other carriers.

V. Section 3005 of the Revised Statutes, as amended, provides as follows:

"All merchandise arriving at any port of the United States destined for any foreign country, may be entered at the custom house and conveyed, in transit, through the territory of the United States without the payment of duties, under such regulations as to examination and transportation as the Secretary of the Treasury may prescribe."

VI. For many years prior to and since the adoption of the so-called National Prohibition Act on October 28, 1919, complainant has been permitted to transship at the port of New York liquors shipped from ports outside of the United States, for transshipment in the port of New York to vessels destined for ports outside of the United States after obtaining permits at the custom house, said permits being issued by the Collector of Customs under the "regulations" prescribed by the Secretary of the Treasury, a copy whereof is hereunto attached and marked Exhibit B, and reference thereto is prayed.

VII. The wines and intoxicating liquors hereinabove referred to were transhipped either by bonded lighter or bonded truck.

VIII. Under date of July 8th, 1921, the Secretary of the Treasury caused to be transmitted the following telegram to the Collectors of Customs relating to the transshipment of liquor.

"Collector of Customs: Juneau, Alaska, Nogales, Ariz., Buffalo, N. Y., Chicago, Ill., Bridgeport, Conn., Pembina, No. Dak., Duluth, Minn., El Paso, Tex., Tampa, Fla., Galveston, Tex., San Antonio, Tex., Savannah, Ga., Honolulu, Hawaii, Portland, Me., Baltimore, Md., Boston, Mass., Detroit, Mich., St. Paul, Minn., Mobile, Ala., New Orleans, La., New York, N. Y., Wilmington, N. C., Cleveland, O., Portland, Ore., Philadelphia, Pa., San Juan, Porto Rico, Providence, R. I., Rochester, N. Y., Port Arthur, Texas, San Francisco, Cal., Los Angeles, Cal., San Diego, Cal., Charleston, S. C., Ogdensburg, N. Y., St. Albans, Vt., Norfolk, Va., Seattle, Wash., Milwaukee, Wis., Great Falls, Mont.;

Pursuant Attorney General's opinion June thirtieth affirming previous opinion February fourth you are directed to refuse transportation and exportation entries for all intoxicating liquors your district not covered by prohibition permit. This order is to be effective on all such liquors shipped from foreign countries on and after July fifteenth, nineteen twenty-one. Such liquors shipped on or after that date should be seized and forfeited in usual manner under customs regulations.

J. H. MOYLE."

Complainant is advised by counsel and verily believes that such directions of the Secretary of the Treasury were and are arbitrary, unauthorized and void, because they purport and attempt to limit and restrict the plaintiff's right to have liquor arriving on complainant's vessels at the port of New York, destined to a foreign country, transhipped to ships destined to ports outside of the United States.

IX. The Attorney General, in response to a request for an opinion as to whether the Eighteenth Amendment of the Constitution of the United States and the National Prohibition Act prohibited or affected in any way "in transit" shipments of liquor for beverage purposes touching at the ports of or moving through the United States when originating in and destined for foreign countries under the provisions of Section 3005 of the Revised Statutes, as amended, advised the Secretary of the Treasury that Section 3005 of the Revised

Statutes did not apply to intoxicating liquors for beverage purposes and that the National Prohibition Act prohibits "in transit" shipments of such liquors touching at the ports of or moving through the United States, though the same originate in and are destined to foreign countries.

X. Complainant is advised by counsel and verily believes that if the interpretation placed upon the National Prohibition Act by the opinion of the Attorney General as aforesaid is correct, it renders

the said act unconstitutional and void for the reason that the National Prohibition Act was adopted by the Congress in reliance upon and in the exercise of the powers given the Congress by the Eighteenth Amendment to the Constitution of the United States and that said amendment only authorizes the Congress to regulate the transportation of intoxicating liquors when they are to be used for beverage purposes in the United States and territory subject to the jurisdiction thereof; that the said amendment does not give the Congress power to regulate the transshipment of intoxicating liquors in the ports of the United States when intoxicating liquors are not landed in such ports but are transshipped there as an incident to their transportation to countries outside the United States and hence Section 3005 of the Revised Statutes still permits the transshipment in a port of the United States of shipments of wines and intoxicating liquors originating in and destined to a foreign country.

XI. Complainant is also advised by counsel and verily believes said interpretation placed upon the National Prohibition Act by the opinion of the Attorney General is erroneous and void for the reason that the transshipment in the ports of the United States of shipments of wines and intoxicating liquors originating in and destined to a foreign country is not transportation, or exportation as forbidden by the Eighteenth Amendment to the Constitution of the United States or in the so-called National Prohibition Act because said wines and intoxicating liquors are not to be used for beverage purposes within the United States, and hence Section 3005 of the Revised Statutes still permits the transshipment in a port of the United States of wines and intoxicating liquors originating in and destined to a foreign country.

XII. Complainant is advised by counsel and verily believes that said construction placed upon the National Prohibition Act by the Attorney General is illegal, erroneous and void in that it violates the Treaties between the United States and Great Britain, particularly the treaty dated May 8, 1871, ratified June 17, 1871 and proclaimed July 4, 1871, and particularly Article XXIX thereof, and hence Section 3005 of the Revised Statutes still permits the transshipment in the ports of the United States of shipments of wines and intoxicating liquors originating in and destined to a foreign country.

The material provisions of said article of the Treaty hereinbefore mentioned are as follows:

"It is agreed that, for the term of years mentioned in Article XXXIII, of this treaty, goods, wares, or merchandise arriving at the ports of New York, Boston and Portland and any other ports in the United States which have been or may, from time to time, be specifically designated by the President of the United States and destined for her Britannic Majesty's possessions in North America, may be entered at the proper custom house and conveyed in transit, without the payment of duties through the territory of the United States, under such rules, regulations and conditions for the protection of the revenue as the government of the United

States may from time to time prescribe; and under like rules, regulations and conditions, goods, wares or merchandise may be conveyed in transit, without the payment of duties, from such possessions through the territory of the United States for export from the said ports of the United States."

XIII. The complainant has, in the course of its business, contracted with Gilmour, Thompson & Company of Glasgow, Scotland, to transport five cases of whiskey, which is an intoxicating liquor, from Glasgow to Hamilton, Bermuda, to be there delivered to Burrows & Company, agents for Gilmour, Thompson & Company at that place.

Bermuda is a colony, and a possession of the Kingdom of Great Britain and Ireland and subject to the jurisdiction and laws of the Kingdom of Great Britain and Ireland.

Said whiskey has been shipped and is being transported on the S. S. "Cameronia," a vessel belonging to complainant and is covered by a bill of lading to said consignees at Hamilton, Bermuda.

Said steamship "Cameronia" sailed from Glasgow, Scotland, on July 17, 1921 and is now on the high seas bound for the port of New York.

40 Said liquor is to be transhipped in the port of New York for carriage to Hamilton, Bermuda, from the S. S. "Cameronia" to a steamship belonging to the Quebec Line, a corporation organized and existing under the laws of the Dominion of Canada and maintaining and operating a fleet of steamships. None of said steamships is registered in the United States and all of said steamships fly the British flag.

A bill of lading has also been issued for the carriage of such whiskey on the S. S. "Cameronia" from Glasgow to New York which calls for the delivery of said whiskey to the Quebec Line to be carried to Bermuda.

XIV. None of said whiskey to be so transported is intended to be used for beverage purposes within the United States or territory under the jurisdiction thereof, and it is to be brought to the port of New York only for the purpose of transshipment there, as aforesaid.

XV. The complainant alleges that defendant, George W. Aldridge, as directed by said telegram of the Secretary of the Treasury, has threatened to seize and forfeit the said whiskey now in transportation on the S. S. "Cameronia," as aforesaid, and has stated he will refuse

41 to issue the permits for transshipment in the port of New York as provided for in the regulations under Section 3005 of the Revised Statutes heretofore referred to. Complainant verily believes that said defendant, George W. Aldridge, will seize and forfeit said whiskey and will refuse to issue said permits.

Said George W. Aldridge also threatens to seize any other wines and intoxicating liquors which complainant shall bring into the port of New York for transshipment at the port of New York to foreign ports and has stated that he will not again issue any permits for the transshipment of wines and intoxicating liquors within the port of New York.

XVI. Complainant alleges that if it should be deprived of the right to transship liquor through the port of New York pursuant to the terms of Section 3005 of the Revised Statutes as amended, or if the terms and provisions of the so-called National Prohibition Act as construed by the Secretary of the Treasury should be held to have repealed Section 3005 of the Revised Statutes, a large part of its valuable business and good will would be impaired and depreciated and future profits from such portion thereof would be rendered impossible. The value of its property as a going concern
42 would be diminished to the great and irreparable injury of the complainant and such injury and damage would be incapable of admeasurement and adjudication in an action at law and likewise that if such wines and intoxicating liquors were seized, such seizure and prohibition from shipping through the port of New York would compel it to cease the transaction of the business of transporting wines and intoxicating liquors between Glasgow and New York for transshipment to British possessions in the West Indies, South America, and other ports outside of the United States, to its irreparable injury.

XVII. Complainant is advised by counsel, and therefore avers, that according to the true intent and meaning of said National Prohibition Act, said Section 3005 of the Revised Statutes was not in any way amended or repealed and that the National Prohibition Act does not apply to shipments of liquor for beverage purposes touching at the ports of the United States when originating in and destined to foreign countries, but that the provisions of Section 3005 of the Revised Statutes are still in full force and effect and that the complainant is entitled to transship said whiskey at the port of New York. As more fully appears from said telegram of the Secretary of the Treasury, said Secretary of the Treasury has construed
43 the said Act of Congress as forbidding the transshipment of liquor originating in and destined for foreign countries and not intended to be used for beverage purposes within the United States. Notwithstanding the fact that such interpretation of the Act of Congress is erroneous, unauthorized and void and that it exceeds the authority conferred upon the Secretary of the Treasury by the provisions of said Act, and notwithstanding the fact that said National Prohibition Act, if it purports to prohibit the transportation of liquor not intended to be used for beverage purposes within the United States, is unconstitutional and void for the reasons hereinabove stated, it is nevertheless the intent and threat of the defendant, George W. Aldridge, his agents and subordinates, acting in pursuance of said unauthorized directions of the Secretary of the Treasury, to seize the whiskey now being transported on S. S. "Cameronia" for transshipment as aforesaid and any other wines and intoxicating liquors brought to the port of New York for transshipment, and to enforce against the complainant, its officers, agents and servants, various pains and penalties including fines and imprisonment, and various
44 forfeitures of property provided by the Acts of Congress and regulations and thus involve the complainant, its officers, agents and servants, in numerous suits and by such threats

to prevent complainant, its employees and servants, from carrying out its contracts to transship liquor in the port of New York and thus deprive the complainant of its business; all to the irreparable damage of the complainant, and such injury and damage would be incapable of admeasurement and adjudication in an action at law. Furthermore, complainant would be involved in numerous suits if it was forced to bring an action at law to recover back each shipment of liquor so seized. Complainant alleges that in order successfully to carry on its business of transporting liquor for transshipment at the port of New York, it is necessary and essential for it to make contracts for transportation of wines and liquors and that such contracts for the transportation must be made a long time prior to the commencement of the shipment; that unless the complainant can immediately procure from this Honorable Court relief in the premises, no such contract for shipment can reasonably or safely be made;

45 that there will be in that event a cessation of the said business for an indefinite and probably considerable time; such cessation of business will involve irreparable damage to it in that it will destroy a considerable part of its business and cause a loss of its profits and tend to the destruction and loss of its trade and custom.

XVIII. For as much, therefore, as complainant is without remedy in the premises, except in a court of equity and to the end that it may obtain from this Honorable Court the relief to which it is entitled, it respectfully prays that the above named defendant, George W. Aldridge, be directed to make full, true and perfect answer to this Bill of Complaint, but not under oath, an answer under oath being hereby expressly waived, and that the said defendant, his agents, servants, subordinates and employes and each and every one of them, be enjoined and restrained from in any manner enforcing or attempting to enforce, or cause to be enforced, against the complainant, its officers, servants and employes, or any of them, any of the pains, penalties or forfeitures, provided in and by the aforesaid Acts of Congress or any laws or regulations of the Secretary of the Treasury aforesaid, and from arresting and prosecuting the complainant, its officers, agents, servants, or employes, or any

46 of them, for or on account of any alleged violation by them or any of them of the terms of the Acts and provisions of the said Act of Congress, on the ground or claim that transshipping liquor transported through the ports of the United States although shipped from and destined to foreign countries, under the provisions of Section 3005 of the Revised Statutes, is contrary to law.

Complainant further prays that the defendant, his agents, servants, subordinates and employees be restrained and enjoined from refusing to issue to the complainant, its agents, officers, servants, employees or any of them the permits under Section 3005 of Revised Statutes heretofore referred to; and that the complainant have such other and further relief as to the court may seem just and equitable in the premises.

Complainant further prays that it be granted a restraining order and preliminary injunction pending the final hearing and decision

of this cause whereby the defendant, his agents, servants, subordinates and employees and each and every one of them will be enjoined and restrained as heretofore prayed, and that upon final hearing the said injunction be made perpetual.

Complainant further prays that a writ of subpoena be issued herein directed to said defendant, George W. Aldridge, commanding him on a day set to appear and answer the amended bill of complaint herein.

ANCHOR LINE (HENDERSON
BROTHERS), LTD.,
By R. H. BLAKE,
Agent.

LORD, DAY & LORD,
Solicitors for Complainant.

25 Broadway, New York City.

LUCIUS H. BEERS,
FRANKLIN B. LORD,
Of Counsel for Complainant.

48 STATE OF NEW YORK,
County of New York, ss:

On this 30th day of August, 1921, before the undersigned, a Notary Public, duly commissioned and sworn, appeared R. H. Blake, who being duly sworn, deposes and says: That he is an agent of and for The Anchor Line (Henderson Brothers) Ltd., the complainant in the above entitled suit; that he has read the foregoing Bill of Complaint and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated upon information and belief, and as to those matters he believes them to be true.

R. H. BLAKE.

[SEAL.] FREDERICK W. EGGERS,
Notary Public.

Bronx Co. Clerk's No. 22.
N. Y. Co. Clerk's No. 147.
N. Y. Register's No. 3123.
Comm. Expires Mar. 30, 1923.

49 EXHIBIT A.

Liquor Transshipments from Glasgow, 1918-1920.

1918.

For British West Indies:

Whiskey	230 cases	
Wine	2 hogsheads	
Stout	40 cases	
Ale	25 cases, 5 barrels—Freight earned =	£162

For Cuba, Mexico and S. America:

Whiskey	4,956 cases, 285 barrels, 11 hogsheads	
Stout	275 cases	
Ale	375 cases, 7 barrels	
Beer	3,073 cases	
Wine	29 cases	
Gin	50 cases	
Bitters	10 cases—Freight earned =	1,245
Total freight		£1,407

1919.

For British West Indies:

Whiskey	81 cases, 4 hogsheads	
Gin	10 cases	
Ale	10 hogsheads—Freight earned =	£33

For Cuba, Mexico and S. America:

Whiskey	14,928 cases, 430 barrels, 12 casks, 81 baskets	
Gin	466 cases	
Stout	690 cases	
Beer	435 cases	
Ale	10,948 cases—Freight earned =	£3,287
Total freight		£3,320

50

1920.

For British West Indies:

Beer	105 cases	
Whiskey	18 casks, 35 hogsheads, 770 cases	
Ale	230 hogsheads, 40 cases	
Wine	10 cases—Freight earned =	£905

For Cuba, Mexico and S. America:

Whiskey	12,520 cases, 10 hogsheads	
Ale	3,864 cases	
Beer	9,560 cases	
Stout	65 cases	
Wine	627 cases, 5 hogsheads	
Gin	30 cases—Freight earned =	4,012
Total freight		£4,917

1918	£1,407
1919	3,320
1920	4,917

Total freight earned £9,644

EXHIBIT B.

Customs Regulations for Transshipment.

Article 694.

"Entry in Transit for Exportation.—Merchandise arriving at any port in the United States and shown by manifest, bill of lading, invoice or other satisfactory evidence to be destined to a foreign country, may be entered for shipment in transit through the United States or for immediate exportation without examination or appraisement. Invoices will not be required on such entries but entries must contain a proper description of the merchandise and its aggregate value and the marks and numbers on the packages.

Hides not disinfected according to U. S. regulations cannot be shipped in transit through the United States.

The name of the consignee who is to attend to the shipment at the port of exit must be noted on the entry.

Article 695.

Procedure at Port of Original Entry.—

(a) Foreign merchandise arriving by rail.

(b) When foreign merchandise in transit through the United States is transshipped at the port of first arrival for shipment in transit, an entry "in transit for exportation" (Customs Cat. No. 7510) must be filed at the port of entry in quintuplicate, two copies for use at the original port, one for use as a permit and two for use at port of destination. One of the latter will be returned as a cancellation certificate upon the exportation of the merchandise. Merchandise arriving in one vessel, consigned to one party, must be included in one entry in transit for exportation although destined to two or more places in a foreign country.

Upon the completion of the entry the same procedure will be followed as in the case of an entry for immediate transportation without appraisement.

A record of in-transit merchandise entered and forwarded for exportation at another port will be kept at port of first arrival on Customs Cat. No. 5047.

Procedure at Port of Exportation.—

(a) When Merchandise is to be Transshipped.—Upon the arrival of the goods from another port at the port of exportation, the carrier will deliver to the collector the carrier's customs manifest (Customs Cat. No. 7512) accompanying the car. The customs seals on the car may be removed under authority from the collector and contents of cars delivered for transfer to exporting vessel upon presentation to the discharging inspector Customs Cat. No. 7513

properly filled out. This form is a combined permit to export bonded goods, transfer ticket and export declaration and will be prepared by the exporting consignee. The carrier will endorse the transfer ticket and the discharging inspector will note the delivery in his return on the carrier's manifest. The transfer ticket (Customs Cat. No. 7513) will accompany the merchandise to the exporting vessel and will be certified to by the lading inspector and delivered to vessel to be attached to the outward manifest prior to clearance.

If any part of a shipment is not exported on the vessel named (the inspector will note it and get new ticket for the goods diverted). There must be at all times in the possession of the inspector on the station at which bonded goods are awaiting exportation, a transfer ticket (Customs Cat. No. 7513) covering such goods. This form will be used in lieu of an export declaration on merchandise shipped under customs bonds and such merchandise must not be exported until this form has been signed by the lading inspector. After the clearance of the exporting vessel, this form will be detached from the outward manifest and forwarded to the Bureau of Customs Statistics at the Port of New York. The fact of exportation will be endorsed on the mail copy of the entry (Customs Cat. No. 7510) which will be returned to the port of first arrival as a cancellation certificate.

54 (b) When merchandise is not transshipped.

(c) If foreign merchandise in transit is brought in at, and exported from the same port, an entry "in transit for exportation" (Customs Cat. No. 7510) will be filed in triplicate, one copy for use as a permit. When merchandise is exported in the importing vessel without landing, the customs officer in charge of the vessel shall certify that the vessel was constantly under customs supervision and that merchandise entered for exportation was not discharged during her stay in port.

55

Answer.

District Court of the United States, Southern District of New York.

THE ANCHOR LINE (HENDERSON BROTHERS), LTD., Complainant,
against

GEORGE W. ALDRIDGE, Collector of Customs for the Port of New York.
Defendant.

Now comes the defendant herein and in answer to the amended bill of complaint by his attorney, William Hayward, United States Attorney for the Southern District of New York, alleges as follows:

First. Defendant moves that the amended bill of complaint herein and divers parts thereof be dismissed, and assigns the following grounds for this motion, namely:

1. The suit is in effect one against the United States and the bill does not aver or show that the United States has consented to be sued herein.

2. The Court has no jurisdiction to grant the relief prayed for or any part thereof.

3. The bill does not present a cause of action in equity
56 under the Constitution of the United States.

4. The bill does not disclose a cause of action equitable in its nature, civil in its character and arising under the Constitution of the United States.

5. The facts alleged in the bill are insufficient to constitute a valid cause of action in equity.

6. It appears from the bill that the complainant has a plain, adequate and complete remedy at law.

Second. Defendant denies that the directions of the Secretary of the Treasury set forth in Paragraph VII of the amended bill are arbitrary, unauthorized or void, and on the contrary alleges that the said directions are valid and that it was incumbent upon the Secretary of the Treasury to issue such directions under the law.

Third. Defendant denies each and every allegation contained in Paragraphs X and XI of said amended bill.

Fourth. Defendant denies the allegations in Paragraph XII of said amended bill that the construction placed upon the National Prohibition Act by the Attorney General is illegal, erroneous and void in that it violates the treaties between the United States and Great Britain, particularly the treaty dated May 8, 1871, ratified

57 June 17, 1871 and proclaimed July 4, 1871, and more particularly Article XXIX thereof, and that hence Section 3005 of the Revised Statutes still permits the transshipment in the ports of the United States of shipments of wines and intoxicating liquors, originating in and destined to a foreign country. On the contrary, defendant alleges that said article of said treaty has long since been abrogated by operation of law and does not apply to the kind of merchandise here in question.

Fifth. Defendant denies the allegations contained in Paragraph XVII of said amended bill of complaint in so far as it is alleged that according to the true intent and meaning of said National Prohibition Act, said Section 3005 of the Revised Statutes was not in any way amended or repealed and that the National Prohibition Act does not apply to shipments of liquor for beverage purposes touching at the ports of the United States when originating in and destined to foreign countries, and the allegation in said Paragraph XVII that the provisions of Section 3005 of the Revised Statutes are still in full force and effect and that the complainant is entitled to transship said whiskey at the Port of New York. Defendant further

denies those allegations of Paragraph XVII of said amended
58 bill which allege that the interpretation placed upon the
National Prohibition Act by the Secretary of the Treasury
is erroneous, unauthorized and void and that it exceeds the authority
conferred upon the Secretary of the Treasury by the provisions of
said Act, and that the National Prohibition Act, if it purports to pro-
hibit the transportation of liquor not intended to be used for beverage
purposes within the United States, is unconstitutional and void.

For a separate and distinct defense herein, defendant alleges:

Sixth. Defendant realleges and reaffirms as part of this separate
and distinct defense each and every allegation contained in paragraphs
First to Fifth above.

Seventh. On information and belief that for the past three years
intoxicating liquors originating in foreign countries, have been
landed in the Port of New York under in transit bills of lading,
that is, bills of lading which show that the shipments were destined
to consignees in foreign countries, and that such shipments have
been transferred within the Port of New York from importing vessels
to exporting vessels and from points of rail deliveries to exporting
vessels. That the amount of this traffic has been large and
59 may be divided generally into two classes. These two classes
are:

(a) Shipments from European countries destined to points in
Central America, South America and the West Indies, which are
transshipped in the Port of New York to the exporting vessel.

(b) Shipments by rail from Canada, mainly of whiskey and alcohol,
consigned to persons in countries of South or Central America
or the West Indies. These shipments from Canada arrive by rail
and are upon bills of lading calling either for delivery alongside the
exporting vessel in New York or for delivery to an intermediate
consignee at a rail point of delivery.

Eighth. On information and belief that in all cases of such liquors
arriving by vessel, the responsibility of the importing vessel appears
to cease forty-eight hours after the landing of the shipment or upon
the actual delivery to a Government truckman or lighterman. That
such intoxicating liquors are frequently to be exported by a vessel
berthed at a different dock and schedule- to sail sometimes as much
as twelve days after the landing of the importing vessel, and that in
some cases the dock from which the exporting vessels sail is as much
as six or seven miles by land or water from the berth of the
60 incoming vessel, as for instance where shipments arriving
on the Anchor Line at Pier 64 North River, at West 23rd
Street, New York City, are destined to be exported by a vessel sailing
from the piers of the Bush Terminal in South Brooklyn, N. Y.
That in all cases there elapses some time, of perhaps a day or more,
and there is involved some carriage by land or water or both, and
that such lapse of time and necessity of carriage in this port has sub-

jected such liquors to pilferage, loss and other unlawful disposition, with the result that large quantities of such liquor enter into consumption for beverage purposes in the United States.

Ninth. On information and belief that with respect to the shipments from Canada by rail, the same situation exists, particularly with respect to shipments which are consigned to an intermediate consignee at a point of rail delivery.

Tenth. On information and belief that both in the cases of importation by vessel and in those of importation by rail, there have been and were up to July 15, 1921, large losses of such intoxicating liquors destined for foreign countries, and deponent verily believes that such liquors were purloined or stolen and ultimately
61 found their way into consumption for beverage purposes, in the United States, contrary to the statute. That annexed hereto and made a part hereof as Exhibit "A" is a schedule made up on information furnished by the Collector of Customs at the Port of New York and which defendant believes to be true and correct showing instances between July 1, 1919, and July 1, 1921, in which shortages of liquor were discovered by the customs officials upon the arrival of the said shipments upon the exporting vessels, such shortages having occurred between the time the goods were landed in the Port of New York and the time of their arrival upon the exporting vessel, all said instances being cases in which the importing carrier was a vessel belonging to and operated by the complainant herein. That attached hereto and made a part hereof as Exhibit "B" is a schedule showing instances where shortages of intoxicating liquors have been discovered by the customs officials upon the arrival of such liquors upon the exporting vessel, all such shortages having occurred in the Port of New York except where noted as "en route". The instances noted in said Schedule "B" are made up from information furnished by the Collector of the Port of New York and defendant believes said schedule to be true and correct. The instances so mentioned are cases in which the importing carrier
62 was some company other than the complainant herein.

Eleventh. That as evidence of the limits to which the purloiners of such intoxicating liquors will go to obtain said liquors unlawfully, defendant alleges on information and belief the facts in Entry No. 17413, appearing on "Exhibit B" attached hereto and made a part hereof. In that case a shipment of 500 drums of high proof alcohol was landed from the steamship "Mexico" of the Ward Line at Pier 13, East River, on December 17, 1920. This shipment was thereafter loaded on two barges, the "George E" and the "Cornell", for transfer to a vessel of the American Mediterranean Levant Line at the foot of 10th Street, South Brooklyn, which was scheduled to sail for Constantinople about January 3, 1921. The barge "Cornell" containing 282 drums of the shipment was moored in the neighborhood of Pier 1, North River, and was stolen during the night of December 22-23, 1920, and was not recovered until several days after. That upon recovery of the barge there were found to be miss-

ing 174 drums of 190-proof Cuban alcohol, and that there have been recovered since that time only 29 drums of such alcohol, so that there are still missing 145 drums of alcohol, which deponent

believes has entered into consumption in the United States.

63 That such drums each contained 108 or 109 gallons of high proof alcohol and that the liquidated tax on the alcohol lost is shown by Customs liquidation to be \$147,694.67. That defendant is informed and believes and therefore alleges that the purloining of this alcohol was accomplished by previous theft of a tug moored on the New Jersey shore of the Hudson River, which tug was navigated to the berth of the two lighters above named, at Pier 1, North River; that the said tug was attached to the lighter containing the larger share of the shipment in question which was moored on the outside of the two lighters; that these drums of alcohol weighed approximately 900 pounds apiece; and that defendant verily believes that thorough plans were worked out for having the lighter unprotected and for unloading it and delivering the drums to unknown persons.

Twelfth. On information and belief that prior to July 1921 the practice of the Collector of the Port of New York in cases where such liquor was found to be missing on exportation was to endeavor to collect from the truckman or other carrier \$2.60 per gallon under Paragraph 237 of the Tariff Act plus \$6.40 per gallon under Paragraph 600 of the Revenue Act of 1918. That on July 7, 1921 pursuant to request for instructions by the Collector of Customs

64 at New York, the Secretary of the Treasury issued the following ruling:

Office of the Secretary,

Washington.

4675/297.

July 7, 1921.

The Collector of Customs,
New York, N. Y.

SIR:

The Department refers to your letter of 20th ultimo, relative to the practice of basing fines against carriers and truckmen for shortages in bonded shipments of distilled spirits upon the highest rate of duty and internal revenue tax accruing, that is, at the rate of \$2.60 per gallon under paragraph 237 of the Tariff Act, plus \$6.40 per gallon under paragraph 600 of the Revenue Act of 1918.

You state that at the present time the highest assessment made upon regular importations is \$2.60 per gallon under the Tariff Act, and \$2.20 under the Revenue Act, and ask to be advised if, in the Department's opinion, it is proper in cases of the kind under consideration to base the fine upon a total of \$4.80 per proof gallon.

The tax imposed on distilled liquors under Section 600 of the Revenue Act of 1918, is for liquors imported for beverage purposes. Liquor coming into the country after the Prohibition Act cannot lawfully be imported for beverage purposes and, therefore, it would

seem that a subsequent shortage accruing while in the custody of the carrier would not serve to revive the above section.

65 Also the duty accrues on the merchandise at the time of entry and the carrier contracts to protect the Government from loss of duty while in its custody. As the duty and tax which accrues were not assessed on the basis of the importation for beverage purposes, the revenue loss to the Government of any shortage cannot be any greater than the rate assessed for the importation at time of entry. The Government cannot lose an amount equal the highest rate assessed under Section 600 as no importation can be made for beverage purposes.

Therefore, it is the opinion of the Department, that the total of \$4.80 per proof gallon is the proper amount upon which to base fines against carriers and truckmen for shortages in shipments of distilled liquors.

Respectfully,

GEO. W. ASHWORTH,
Chief Div. of Customs.

Thirteenth. That defendant is informed by his attorney and therefore alleges that if the complainant is correct in his construction of the National Prohibition Act, the implications involved are exceedingly serious and a claim of the complainant, if allowed, would carry with it as a necessary corollary the right of any foreigner or foreign ship to transport liquor within the territorial waters of the United States provided the intention of the shipper was not to import the same into the United States. Defendant is further informed and believes and therefore alleges that for the past six months at least a

66 large and profitable business has been carried on by American citizens with the object and result of importing liquor into this country contrary to the law. That the vessels used by such persons are vessels under British registry and such vessels sail out of a British port in the Bahama Islands furnished with clearance papers showing that they are bound for Halifax, another British port. Defendant is further informed and believes that one such vessel is now under seizure in the Port of New York and that another such vessel came into the Port of Philadelphia, having previously unladen part of its cargo of liquor. That said vessel in Philadelphia, though actually engaged in smuggling, alleges that part of its cargo was unladen and that it came into the Port of Philadelphia by reason of stress of weather and that it was in fact bound from one British port to another. Defendant is further informed and believes and therefore alleges that such vessels carrying proper clearances and manifests from one British port to another showing in their papers no intention of landing the liquor in the United States for transshipment or otherwise could, if complainant is correct in its contentions, navigate without let or hindrance the territorial waters of the United States and could then enter ports of the United States for repairs or supplies without interference by the officials of the Government. Defendant is further informed and believes and therefore alleges that if, as complainant claims the

so-called National Prohibition Act does not prohibit the transportation of liquor within the territorial waters of the United States and that vessels originating at a foreign port bound to a foreign port are entitled to navigate the territorial waters of the United States without interference by the officials of the United States Government where they are liquor laden, that the task of preventing the smuggling of liquor into the United States by means of such foreign vessels, which task is already difficult, will be rendered practically impossible.

Fourteenth. That attached hereto and made a part hereof as Exhibits "C," "D" and "E" respectively are the forms of bond now and for some time past in use as prescribed by the Secretary of the Treasury to be furnished by cartmen or lightermen, by the exporter and by the common carrier of merchandise transported under Section 3005 of the Revised Statutes of the United States.

Wherefore, defendant prays that the bill of complaint herein be dismissed and that the defendant have such other and further relief as to the court may seem just and the defendant recover his
68 costs and disbursements herein.

WILLIAM HAYWARD,
*United States Attorney for the
Southern District of New York,
Solicitor for the Defendant.*

Office and Post Office Address: Old Post Office Building, Borough of Manhattan, City of New York.

69

EXHIBIT A.

Shipments Arriving on Vessels of the Anchor Line in Which There Were Shortages Discovered on Export, with Amount of Importation and of Shortage.

Entry.	Date.	Amount imported.	Shortage.
22631.	September 2, 1919..	236 cases beer & whiskey	25 cases.
23220.	September 16, 1919.	595 cases whiskey	12 "
26252.	November 11, 1919.	1,466 cases ale, etc.	1 case.
26211.	November 11, 1919.	242 packages whiskey, etc.	1 "
26257.	November 11, 1919.	231 cases whiskey	13 cases.
26263.	November 11, 1919.	25 cases whiskey	1 case.
26963.	November 24, 1919.	13 baskets & 100 cases whiskey	2 bask'ts & 4.68 gls.
28943.	December 30, 1919.	300 cases whiskey	79 cases.
28948.	December 30, 1919.	165 cases whiskey & gin	90 "
28952.	December 30, 1919.	50 cases whiskey	48 "
28955.	December 30, 1919.	35 cases whiskey	20 "
28956.	December 30, 1919.	35 cases gin & whiskey	12 "
35490.	April 26, 1920.....	400 cases whiskey	13 bottles.
36649.	May 18, 1920.....	763 cases whiskey, etc.	25 bottles.
36654.	May 18, 1920.....	1,170 cases whiskey	12 bottles.
37265.	May 28, 1920.....	1,505 cases whiskey, etc.	5 cases.
70			
10042.	October 5, 1920....	20 cases whiskey	16 bottles.
13707.	November 10, 1920.	450 cases whiskey	5 bottles.
25569.	March 21, 1921....	50 cases whiskey	5 cases.

EXHIBIT B.

71

Shipments of Intoxicating Liquors Imported between July 1, 1919, and July 1, 1921, by Rail or Ship, by Carriers Other than Complainant in Which Shortages Were Discovered upon Delivery to Exporting Carrier, with Amount of Shipment and of Shortage.

Entry.	Date.	Amount Imported.	Shortage.	Importing carrier.
20321.	July 3, 1919.	200 cases vermouth	7 bottles	Cosulich Line
20323.	July 3, 1919.	3 cases wine	3 cases	Transatlantic Italiana
22108.	August 22, 1919.	195 cases liquors, etc.	4½ cases	French Line
1139.	August 5, 1919.	200 cases whiskey	3 bottles (en route)	N. Y. Central
1274.	September 2, 1919.	40 cases whiskey	1 case (en route)	"
1286.	September 2, 1919.	50 cases whiskey	2 cases (en route)	"
1288.	September 2, 1919.	50 cases whiskey	1 case (en route)	"
1423.	September 7, 1919.	220 cases whiskey	1 case	Italian Line
23389.	September 17, 1919.	50 cases vermouth	15 bottles	White Star Line
23396.	September 17, 1919.	100 cases whiskey	1 case	N. Y. Central
1542.	September 12, 1919.	300 cases whiskey	3 bottles	Holland-American Line
25241.	October 22, 1919.	222 cases gin & liquor	1 case	

72

24284.	October 3, 1919.	297 cases whiskey, etc.	8 bottles whiskey	French Line
25174.	October 21, 1919.	50 cases wine	1 case	"
25283.	October 22, 1919.	200 cases wine	3 cases	Co Franc de Navig.
25858.	October 29, 1919.	25 cases wine	6 cases	Jiminez & Co.
25860.	October 29, 1919.	99 cases wine	1 case	"
25862.	October 29, 1919.	25 cases wine	1 case	"
25867.	October 29, 1919.	25 cases wine	1 case	Co Franc de Navig.
25195.	October 21, 1919.	832 cases wines, etc.	2 cases vermouth	

2732. October 18, 1919.....	34 cases whiskey	2 cases	N. Y. Central
2384. October 8, 1919.....	1,241 cases whiskey	9 cases (en route)	"
2247. October 6, 1919.....	1,000 cases whiskey	1 case 5 bottles	"
26404. November 14, 1919.....	295 cases wine, etc., 13 baskets	22 bottles	Jiminez & Co.
26357. November 12, 1919.....	25 cases vermouth	10 cases	Franc de Navigation
25832. November 5, 1919.....	372 cases brandy	52 bottles	French Line
28630. November 23, 1919.....	100 cases whiskey	7 cases	White Star Line
26630. November 18, 1919.....	622 cases wine & brandy	1 case brandy	Furness Line
73			
25859. November 1, 1919.....	25 cases wine	3 cases	Jiminez & Co.
26258. November 12, 1919.....	75 cases ale	2 cases	Furness
3301. November 22, 1919.....	20 cases whiskey	15 bottles	N. Y. Central
3284. November 22, 1919.....	20 cases whiskey	1 case (en route)	"
3281. November 22, 1919.....	100 cases whiskey	22 cases (en route)	"
3278. November 22, 1919.....	8 cases whiskey	2 cases (en route)	"
3019. November 10, 1919.....	20 cases whiskey	17 cases	"
3016. November 10, 1919.....	50 cases whiskey	5 cases	"
3027. November 10, 1919.....	3 cases whiskey	3 cases	"
3021. November 10, 1919.....	25 cases whiskey	19 cases	"
3025. November 10, 1919.....	101 cases whiskey	100 cases	"
3018. November 10, 1919.....	10 cases whiskey	10 cases	"
3020. November 10, 1919.....	300 cases whiskey	192 cases	"
3017. November 10, 1919.....	50 cases whiskey	32 cases (en route)	"
74			
3023. November 10, 1919.....	110 cases whiskey	92 cases	N. Y. Central
3024. November 10, 1919.....	30 cases whiskey	18 cases	"

EXHIBIT B.—Continued.

Entry.	Date.	Amount imported.	Shortage.	Importing carrier.
3808.	December 4, 1919.	200 cases whiskey	16 cases	N. Y. Central
3807.	December 4, 1919.	1,000 cases whiskey	18 cases	"
4422.	December 23, 1919.	600 cases whiskey	8 cases	"
27420.	December 3, 1919.	338 cases wine	2 cases	N. Y. & Cuba M S/S Co.
27948.	December 10, 1919.	291 cases gin, etc.	2 cases ale	Cunard Line
27324.	December 19, 1919.	1,150 cases wine, etc.	7 cases wine 1 case liquor	French Line
27470.	December 3, 1919.	30 cases gin & brandy	3 bottles brandy	American Line
28085.	December 12, 1919.	493 cases champagne	4 bottles	French Line
27740.	December 5, 1919.	145 cases wine	1 case	Jiminez & Co.
27783.	December 8, 1919.	81 cases wine	1 case	Co Transatlantica
27303.	December 2, 1919.	322 cases liquors, etc.	9 cases liquors	French Line
75				
27837.	December 8, 1919.	100 cases beer	3 bottles whiskey	White Star Line
27739.	December 5, 1919.	25 cases whiskey	25 bottles	Jiminez & Co.
27713.	December 6, 1919.	125 cases wine	1 case wine	French Line
		171 cases champagne, etc.		
28011.	December 10, 1919.	351 packages wine	5 cases & 18 bottles	Jiminez & Co.
28010.	December 10, 1919.	29 cases wine	15 bottles	"
27587.	December 4, 1919.	8 cases wine	1 case	Co. Franco de Navig.
29021.	December 31, 1919.	200 cases champagne	2 bottles	Red Star Line
29563.	January 8, 1920.	200 cases cordials	8 bottles	French Line
29729.	January 12, 1920.	25 cases wine	1 case & 9 bottles	Jiminez & Co.
30496.	January 29, 1920.	8 cases rum	1 bottle	United Fruit Co.

29655. January 10, 1920.....	300 cases vermouth	1 case	French Line
30455. January 28, 1920.....	905 cases gin, etc.	75 bottles gin, 1 case wine	Cunard Line
30497. January 29, 1920.....	99 cases rum	8 bottles	United Fruit Co.
30498. January 29, 1920.....	100 cases rum	1 case	French Line
30281. January 23, 1920.....	84 cases spirits	9 cases	Atlantic Transport
76			
30495. January 29, 1920.....	50 cases rum	35 bottles rum	United Fruit Co.
30603. January 30, 1920.....	8 cases brandy	1½ cases	French Line
31864. February 24, 1920.....	26 cases brandy	3-1/10 gallons brandy	Cosulich Line
31948. February 25, 1920.....	120 cases vermouth	16 bottles	Navig. Italiana
31362. February 16, 1920.....	140 cases wine and vermouth	1 case & 89 bottles	Transatlantic Italiana
30776. February 3, 1920.....	24 cases wine	1 case & 1 bottle wine	Society National Navigation (Italian)
31950. February 25, 1920.....	1 case liquor	3 cases	Society Navigation Italian
32307. February 16, 1920.....	131 cases champagne	8 bottles	French Line
31985. February 23, 1920.....	695 cases gin, etc.	6 cases	Atlantic Transport
31257. February 13, 1920.....	100 cases vermouth	56 bottles	Navig. Generale Italiana
31895. February 24, 1920.....	116 cases spirits, etc.	1 case wine	American Line
5644. February 9, 1920.....	30 cases whiskey	4 cases spirits	Lehigh Valley
33302. March 19, 1920.....	15 cases vermouth	5 cases, 17 bottles	African Mediterranean Line
77			

EXHIBIT B.—Continued.

Entry.	Date.	Amount imported.	Shortage.	Importing carrier.
32308.	March 2, 1920.	481 cases brandy, etc.	15-7/12 cases	French Line
32738.	March 8, 1920.	318 cases liquors	15 bottles cognac	Ward Line
6181.	March 10, 1920.	50 cases whiskey	1 bottle	N. Y. Central
33363.	March 24, 1920.	253 cases wine	7-3/4 cases	Co. Navig. Italiana
6185.	March 10, 1920.	37 cases whiskey	3 bottles	N. Y. Central
33632.	March 24, 1920.	1,203 cases wine	46 bottles	Italian Line
6191.	March 10, 1920.	500 cases whiskey	3 cases, 9 bots.	N. Y. Central
3823.	March 14, 1920.	200 cases whiskey	1 case	N. Y. Central
6186.	March 10, 1920.	40 cases whiskey	3 bottles (en route)	"
6187.	March 10, 1920.	50 cases whiskey	5 bottles (en route)	"
6182.	March 10, 1920.	270 cases whiskey	1 case (en route)	"
6180.	March 10, 1920.	100 cases whiskey	1 case (en route)	"
			4 barrels	"
1078.	March 16, 1920.	110 cases beer	24 cases (en route)	"
1103.	March 20, 1920.	150 barrels beer	7 barrels (en route)	"
78				
1068.	March 15, 1920.	110 barrels beer	15 barrels (18 gallons)	N. Y. Central
35009.	April 15, 1920.	183 barrels wine & vermouth	per bbl.	France de Navigation
			78 gallons wine	
35013.	April 15, 1920.	130 cases brandy, etc.	1 case wine	Co France de Navig.
35010.	April 15, 1920.	130 cases brandy & wine	4 cases wine	"
34901.	April 14, 1920.	33 cases wine, etc.	4 cases wine	White Star Line
34468.	April 5, 1920.	100 cases cognac	34 bottles	Furness Prince

35079. April 29, 1920.....	1 hogshhead wine	1 hogshhead (60 gal- lons)	Atlantic Transportation Co.
35752. May 1, 1920.....	8 cases cognac	6 cases	Furness Prince
36437. May 13, 1920.....	30 cases champagne	8 bottles	American Line
36796. May 19, 1920.....	40 cases champagne	6 bottles	"
39021. June 28, 1920.....	100 cases liquors, etc.	12 bottles	Worms & Co.
39017. June 28, 1920.....	1,567 cases spirits, etc.	6 bottles spirits	Ward Line
37611. June 1, 1920.....	1,002 cases liquors, etc.	14 bottles	Trans-Atlantic Italiana
38352. June 15, 1920.....	552 cases brandy	50 bottles	Cunard Line
79			
37723. June 2, 1920.....	50 cases gin	18 bottles	Cunard Line
37563. June 2, 1920.....	177 cases gin	11 cases	Ward Line
7171. June 10, 1920.....	230 cases whiskey	42 gallons 4 barrels	N. Y. Central
1325. June 29, 1920.....	105 barrels beer	131 bottles (en route)	"
7174. June 10, 1920.....	30 cases whiskey	72 bottles	"
7176. June 10, 1920.....	50 cases whiskey	7 cases	"
7408. June 28, 1920.....	300 cases whiskey	300 cases	"
7177. June 10, 1920.....	50 cases whiskey	3 cases	"
7160. June 10, 1920.....	15 cases whiskey	4 cases	"
7164. June 10, 1920.....	100 cases whiskey	4 cases	"
393. July 24, 1920.....	300 cases whiskey	3 cases 8 bottles	"
92. July 8, 1920.....	800 cases whiskey	2 cases	"
106. July 9, 1920.....	140 cases whiskey	2 cases 254 bottles	"
107. July 9, 1920.....	55 cases whiskey	55 cases whiskey	"
1520. July 15, 1920.....	25 cases gin	41 bottles	Luckenbach
1516. July 15, 1920.....	40 cases brandy & gin	6 bottles	"

EXHIBIT B.—*Continued.*

Entry.	Date.	Amount imported.	Shortage.	Importing carrier.
2810.	July 28, 1920.....	500 cases whiskey	7 bottles	Furness
230.	July 15, 1920.....	50 barrels beer	20 barrels (en route) 19 bottles	N. Y. Central
6030.	August 28, 1920.....	350 cases vermouth	24 bottles	Italiana
3525.	August 4, 1920.....	135 cases wine	37 bottles	Cunard Line
4401.	August 12, 1920.....	50 cases gin	3 bottles	Luckenbach Line
211.	August 11, 1920.....	46 drums alcoholic spirits	5 drums	Delaware, Lackawanna & Western
982.	August 29, 1920.....	218 barrels beer	1 barrel	Erie R. R.
190.	August 20, 1920.....	25 barrels beer	137 bottles (en route)	N. Y. Central
7569.	September 14, 1920.....	401 packages wine, etc.	18 bottles wine	French Line
7570.	September 14, 1920.....	286 packages liquors, etc.	2 cases & 21 bottles	"
7559.	September 14, 1920.....	75 cases champagne	9 bottles	White Star Line
277.	September 20, 1920.....	185 barrels beer	1 barrel	N. Y. Central
275.	September 20, 1920.....	150 barrels beer	353 bottles	"
9748.	October 1, 1920.....	35 cases wine & gin	9 bottles wine	Luckenbach Line
12109.	October 25, 1920.....	199 cases wine, etc.	51 bottles wine	Atlantic Transport Co.
9839.	October 2, 1920.....	96 cases whiskey	4 bottles	White Star Line
11267.	October 18, 1920.....	97 cases vermouth	58 bottles	Atlantic Transport Co.
3285.	October 9, 1920.....	20 cases whiskey	6 bottles	N. Y. Central
477.	October 18, 1920.....	150 barrels beer	310 bottles	N. Y. Central
2133.	October 16, 1920.....	200 cases whiskey	1 case	"
2134.	October 16, 1920.....	10 cases whiskey	1 case	"

2137. October 16, 1920.....	60 cases whiskey	3 cases	"
1616. October 8, 1920.....	215 barrels beer	70 bottles	"
2133. October 16, 1920.....	200 cases whiskey	2 cases	"
2133a. October 16, 1920.....	200 cases whiskey	2 cases	"
14260. November 15, 1920.....	198 cases wine	17 bottles	Society Ital. de Navig.
1578. November 30, 1920.....	25 cases wine	10 bottles	Ward Line
13976. November 12, 1920.....	435 cases whiskey, etc.	23 bottles	Atlantic Transport Co.
82			
2104. December 11, 1920.....	100 cases whiskey	1 case	Delaware, Lackawanna & Western
17413. December 20, 1920.....	500 drums alcohol	145 drums	Ward Line
2394. December 26, 1920.....	171 barrels beer	105 bottles	N. Y. Central
4045. January 14, 1921.....	120 cases whiskey	2 cases 10 bottles	"
5493. March 28, 1921.....	982 cases whiskey	70 bottles	"
24984. March 15, 1921.....	140 cases wine	10 bottles	Cunard Line
25701. March 22, 1921.....	21 cases liquors	2 bottles	Holland-America Line
24150. March 7, 1921.....	360 cases gin	27 bottles	Cunard Line
28575. April 21, 1921.....	25 cases vermouth	18 bottles	American Line
30331. May 12, 1921.....	2,974 cases spirits	19 cases 8 bottles	Furness Bermuda
31682. May 27, 1921.....	7 cases rum	2 bottles	Ward Line
29822. May 5, 1921.....	10 cases rum	17 bottles	Ward Line
29823. May 5, 1921.....	2 cases rum	8 bottles	Ward Line
33120. June 13, 1921.....	500 cases whiskey	22 bottles	Cunard Line

EXHIBIT C.

Treasury Department.

Customs Cat. No. 3855.

Art. 826, C. R. 1915.

C. D. Mar. 14-17.

Bond No. —.

Bond of Customs Cartman or Lighterman.

Know all men by these presents, That — — —, of — — —, as principal, and — — —, of — — —, and — — —, of — — —, as sureties, are held and firmly bound unto the United States of America in the sum of — Dollars, for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents. Witness our hands and seals this — day of — — —, 191—.

Whereas, the said — — — has made application to be appointed one of the Custom house — within and for the Port of — — —,

Now, therefore, the condition of this obligation is such, That if the said — — —, shall safely deliver all merchandise intrusted to — — —, whether free or dutiable, and shall well and truly perform the several duties of a Customhouse — according to the regulations prescribed

by the Secretary of the Treasury relative to the lighterage,
84 cartage, and drayage of merchandise in bond, and also the

rules and regulations prescribed by the Collector of Customs for the said port in relation thereto, and shall make good all losses or damage which may occur in the — of any goods, wares, or merchandise by the said principal, and in the case of the loss or non-delivery of free goods shall pay an amount equal to the value thereof, but not to exceed \$25 in any one case, then this obligation shall be void; otherwise it shall remain in full force and effect.

— — —, [SEAL.]
— — —, [SEAL.]
— — —, [SEAL.]

Signed and sealed in the presence of—

— — —,
— — —,

(On Reverse of Form.)

STATE OF — — —,
County of — — —, ss:

Rev. Stats. of the U. S., §2616.

I, — — —, having been appointed — — —, do solemnly* — that I will diligently and faithfully execute the duties of the said office, and that I will use the best of my endeavors to prevent and detect

*Swear or affirm.

frauds against the laws of the United States imposing duties upon imports.

85; And I do further solemnly* — that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter: so help me God.

—and subscribed before me this — day of —, A. D. 191—.

Deputy Collector.

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EXHIBIT D.

Treasury Department.

Customs Cat. No. 7557.

C. D., Mar. 26-17.

No. —.

Bond for Exportation or Transportation or for Transportation and Exportation (Single Entry).

(Not required for merchandise withdrawn from warehouse, except when merchandise is transferred to and shipped by a party other than principal on Warehousing Bond.)

Know all men by these presents, That — — —, of — — —, as principal, and — — —, of — — —, and — — —, of — — — as sureties, are held and firmly bound unto the United States of America in the sum of — dollars for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hand and seals this — day of — —, 19—.

Whereas, certain articles described in entry for (W. H. and T.

87 Withd. for Trans., Drawback, etc.) No. —, and filed with the Collector of Customs of the port of — —, on — — —, 19—, is intended for exportation or for transportation to — —

via — —, Now, therefore, the condition of this obligation is such, That if the above-bounden principal shall properly and lawfully enter or withdraw for bona fide exportation or for transportation, or for transportation and exportation, and shall actually export or transport said articles to the destination named herein, and shall furnish the said Collector of Customs with proof that the said articles, if entered

for exportation, were exported through a customs port of exit under customs supervision and landed beyond the limits of the United States, or, if entered or withdrawn for transportation to another customs port, were delivered to the Collector of Customs at the port of destination and there properly entered and rewarehoused, the said proof to be filed in the form and within the time required by law and regulations, or any lawful extension thereof, and if the said principal shall deliver to the Collector of Customs such invoices, certificates, declarations, or other documents that are required by law or regulations in connection with the entry or shipment of said articles and in the form and within the time required by law or regulations,

88 or any lawful extension thereof,

Then this obligation shall be void; otherwise it shall remain in full force and effect.

____ [SEAL]
 ____ [SEAL]
 ____ [SEAL]

Signed, Sealed, and Delivered in the presence of--

1. The names of the parties executing the bond, and their respective places of residence, must appear in full in the body of the bond.

2. Each signature must be made in the presence of two persons, who must sign their names as witnesses.

3. There must be not less than two individual sureties; but one corporate surety duly qualified under the act of Congress of August 13, 1894, as amended by the act of March 23, 1910, may be accepted as sole surety. Married women will not be accepted as sureties.

4. If the bond is given by persons composing a firm or partnership it may be executed by any member of such firm or partnership, in which event it will have the same force and effect as if the other members of the firm or partnership had personally executed the same (act of June 20, 1876, as amended by section 70 of the act of August 28, 1894). The names of all persons composing the firm must appear in the body of the bond, as for example, "A, B, and C, composing the firm of A, B & Co." The corporate seal must be affixed to the bond adjoining the signature, as in the case of a private seal affixed by an individual.

5. All erasures and interlineations must be noted above the signatures of the witnesses as having been made before execution of the bond.

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(On Reverse of Form.)

Surety's Oath.

I, ———, residing at No. ——— Street, in ———, State of ———, a surety on the within Bond, do solemnly — that I am a citizen of the United States, and that I am worth the sum of — dollars over and above all debts, claims, and liabilities of every nature whatsoever, and aside from property exempt by law from execution.

.....
 (Description of property.)

United States Customs Service,
 Collection District No. —,
 Port of —.

Subscribed and sworn to before me this — day of — 19—.

Deputy Collector of Customs or Notary Public

90

Surety's Oath.

I, ———, residing at No. ——— Street, in ———, State of ———, a surety on the within Bond, do solemnly — that I am a citizen of the United States, and that I am worth the sum of — dollars over and above all debts, claims, and liabilities of every nature whatsoever, and aside from property exempt by law from execution.

.....
 (Description of property.)

United States Customs Service,
 Collection District No. —,
 Port of —.

Subscribed and sworn to before me this — day of — 19—.

Deputy Collector of Customs or Notary Public.

EXHIBIT E.

Treasury Department.

Customs Form No. 3587.

Carrier's Bond for Transportation of Merchandise in Customs Custody and for the Lading and Unlading of Merchandise under the Act of February 13, 1911, and Other Acts.

The following rules must be complied with:

1. The names of the parties executing the bond and their respective places of residence must appear in full in the body of the bond.

2. The bond must be executed in duplicate, and it must be dated.

3. Each signature must be made in the presence of two persons, who must sign their names as witnesses.

4. There must be not less than two individual sureties, but one corporate surety duly qualified under the act of Congress of August 13, 1894, may be accepted as sole surety.

5. Seals of wax or wafer must be attached to the signatures of principal and sureties, if individuals, and corporate seals must be affixed to the signatures of corporations.

6. A married woman will not be accepted as surety.

7. The sureties must justify in amounts the aggregate of which will be equal to at least twice the penalty of the bond. This rule applies to corporate as well as to individual sureties.

8. Each surety must make and subscribe an affidavit of the amount he is worth over and above all his debts and liabilities, and such exemptions as may be allowed by law, and in addition thereto

92 each individual surety will be required to make affidavit before the collector or deputy collector of the port, or before an officer authorized to administer oaths generally, setting forth by general description the location of one or more pieces of real estate owned by him and the value thereof over and above all encumbrances, and describing the property, real or personal, owned by him (stating the value thereof), which, according to such valuation, shall be equal in value to the amount which he has sworn that he is worth in the surety's oath.

9. Where bonds with individual sureties are given, the collector will be required to certify that the bond has been duly executed in duplicate by the obligors therein named; that he knows the sureties whose names are affixed thereto; that he has made careful and diligent inquiry into their pecuniary responsibility, and that they are, in his opinion, responsible for the payment of an amount equal

to double the penalty named in the bond. This certificate is not required in the case of corporate sureties.

10. If the bond is given by an incorporated company, the person executing it in its behalf must be duly authorized by such company to make, execute, and deliver such bond and to affix the corporate seal of such company thereto. A properly authenticated extract from the minutes of the meeting of the board of directors (or other board competent to bind the corporation) showing that the person executing the bond on behalf of such corporation is duly authorized, and also a duly authenticated extract from the minutes showing the election to office of the person or persons who execute the bond on behalf of the company must be attached to or accompany each copy of the bond, and the corporate seal should be affixed to the bond immediately adjoining the signature of the person so executing the same, as in the case of a private seal affixed by an individual.

11. If the bond is given by persons composing a firm or partnership, each member of the firm must execute it personally; but if any member of a firm be unable to personally execute the bond, it may be executed in his behalf by an attorney in fact, duly authorized by power of attorney under seal, which power, or a certified copy thereof, must accompany the bond. The names of all persons composing the firm must appear in the body of the bond, as for example, "A, B, and C, composing the firm of A, B, and Co."

12. All erasures and interlineations must be noted above the signatures of the witnesses as having been made before execution of the bond.

Know all men by these presents, that we, ———, as principal, and ———, as surety, are held and firmly bound unto the United States of America in the sum of one hundred thousand dollars, for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this — day of —, 192—.

Whereas the above-bounden principal has been designated as a common carrier for the transportation of merchandise in bond:

Now, therefore, the condition of this obligation is such that if the above-bounden principal shall faithfully observe and comply with the laws of the United States and regulations of the Treasury Department pertaining to the transportation, safe delivery, and lading or unlading of goods, wares, and merchandise, and baggage, under sections 3000, 3001, 3005, and 3006 of the Revised Statutes, the act of June 10, 1880, the provisions of the act approved February 13, 1911, and any other act or acts relating thereto in effect on the dates of lading, transportation, unlading, and delivery, and under such regulations as may have been or may hereafter be promulgated by the secretary of the Treasury, and shall pay the necessary expense of such locks, seals, and other fastenings as may be prescribed and required by the Secretary of the Treasury for securing the custody and safe transportation of

such merchandise in such cars, vessels, vehicles, safes, trunks, or pouches as may be authorized and used by it for that purpose; and shall also pay the expense of such customs employees as the Secretary of the Treasury, at his discretion, may cause to be stationed at points along the route of such carrier, or upon any car, vessel, or other vehicle (such expense to include the salary as well as the actual necessary traveling expenses of such employees) in such manner as may be directed by the Secretary of the treasury; and shall pay the extra compensation provided for by the said act of February 13, 1911, or any other act or acts in effect at the time of such service, and the regulations issued in pursuance thereof, to be paid to customs employees in connection with the lading or un-

95 lading of bonded merchandise at night or on Sundays and holidays; and shall use only such means of conveyance for transportation as may be authorized by the Secretary of the Treasury; and shall, without delay, transport and make prompt report by delivery of the manifest which shall accompany the merchandise and make safe delivery of all goods, wares, and merchandise, and baggage, as described in each and every entry or manifest, and in each receipt therefor executed by said principal or its agent, delivered to said principal for transportation under the provisions of the aforesaid laws, or any of them, to the collector or other proper officer of the customs to whom the merchandise is consigned in the manifest, in the manner required by law and regulations aforesaid, or in default of such transportation, report, and delivery, shall pay to the United States as liquidated damages an amount equal to the value of the nondutiable merchandise not so transported, reported, and delivered, the damages on any one shipment not to exceed \$25, and shall pay an amount equal to the duties on dutiable merchandise not so transported, reported, and delivered, provided that when delivery shall have been made of any bonded merchandise to the ultimate consignee or owner, without permit or release having been issued by the collector or other proper officer of the customs, shall

96 pay in each case in addition to the amounts above specified a sum equal to 25 per cent of the said duties; and shall pay any Internal Revenue taxes or other taxes accruing to the United States on the merchandise, together with all costs, charges, and expenses caused by the failure to make such transportation, report, and delivery, and shall also protect and save harmless the United States from any and all losses and liabilities which may occur or be occasioned by reason of the granting of a special license to lade and unlade bonded merchandise at night or on Sundays and holidays, and also from any loss or damage resulting from fraud or negligence on the part of any officer, agent, or other person employed by the above-bounden principal, then this obligation to be null and void; otherwise to remain in full force and virtue.

Signed, sealed, and delivered in presence of—

The rate of premium on this bond is \$— per thousand; the total amount of premium charged is \$—.

97

Affidavit of Individual Surety.

STATE OF _____,
 County of _____, ss:

I, _____, being duly sworn, depose and say that I am one of the sureties on the bond of _____ as —; that I am a resident of _____, by occupation a —, doing business at _____; that I am worth the sum of — dollars over and above my debts and liabilities owing and incurred, exclusive of property exempt from execution; that I own personal property worth \$—, consisting of¹ _____ and real estate worth \$—, as follows:² _____.

Sworn to and subscribed before me this — day of _____, 192—.

98

Affidavit of Individual Surety.

STATE OF _____,
 County of _____, ss:

I, _____, being duly sworn, depose and say that I am one of the sureties on the bond of _____, as —; that I am a resident of _____, by occupation a —, doing business at _____; that I am worth the sum of — dollars over and above my debts and liabilities owing and incurred, exclusive of property exempt from execution; that I own personal property worth \$—, consisting of¹ _____ and real estate worth \$—, as follows:² _____.

Sworn to and subscribed before me this — day of _____, 192—.

⁽¹⁾ Here describe the property by name, so that it can be identified—as "Fifteen shares of the stock of the Manhattan Gaslight Company of New York City."

⁽²⁾ Here describe the property by giving the number of the lot and square, or the precise location, if in the city, or by metes and bounds if in the country, that it may be identified.

99 Port of —, —, 192—.

I hereby certify that the within bond has been duly executed in duplicate by the obligors therein named; that I have carefully and diligently inquired into the pecuniary responsibility of the sureties thereto; and that the same are, in my opinion, responsible and sufficient to insure the payment of the full amount of the penalty of said bond.

—, —,
Collector.

100 (On Back of Preceding Carrier's Bond.)

Section of Surety Bonds.

—, —, 192—.

Examined and approved as to the within Corporate surety.

—, —,
Chief Section of Surety Bonds.

Department of Justice,

Office of the Solicitor of the Treasury.

—, —, 192—.

Examined and approved as to form and execution.

—, —,
Assistant Solicitor.

Treasury Department.

—, —, 192—.

Approved:

—, —,
Assistant Secretary.

101 No. —. Bond of — as common carrier of merchandise in bond and for lading and unlading under the act of February 13, 1911.

Treasury Department.

—, —, 192—.

Respectfully referred to the Solicitor of the Treasury, through the section of surety bonds, for examination as to form and execution.

—, —,
Assistant Chief, Division of Customs.

102 At a Stated Term of the District Court of the United States for the Southern District of New York Held in the Court Rooms Thereof, at the Postoffice Building, in the Borough of Manhattan, City of New York, on the 25th Day of July, 1921.

Present: Hon. Learned Hand, District Judge.

THE ANCHOR LINE (HENDERSON BROTHERS), LTD., Complainant,
against

GEORGE W. ALDRIDGE, Collector of Customs for the Port of New
York, Defendant.

This cause came on to be heard at a term of this Court for motions held at the Postoffice Building in the Southern District of New York on the 21st day of July, 1921, and an adjournment having been asked by counsel for the defendant, and thereupon upon consideration thereof, it was

Ordered, adjudged and decreed as follows, viz: That the hearing of the said motion be, and the same hereby is, adjourned to the 4th day of August, 1921, at the same time and place, and it is further

Ordered, adjudged and decreed, that the United States Marshal in and for the Southern District of New York be, and he hereby is, directed on the arrival of the Steamship "Cameronia," belonging to the complainant herein, to take into his custody for safe keeping, the five cases of whiskey consigned by Gilmour, Thompson & Company of Glasgow, Scotland, to Burrows & Company, Hamilton, Bermuda, as described in the bill of complaint herein, to hold the same pending the determination of this motion.

LEARNED HAND,
District Judge.

I hereby consent to the entry of the foregoing order and waive notice of settlement thereof.

Dated, July 22, 1921.

WM. HAYWARD,
United States Attorney.

In the District Court of the United States for the Southern
District of New York.

THE ANCHOR LINE (HENDERSON BROTHERS), LTD., Complainant,
against

GEORGE W. ALDRIDGE, Collector of Customs for the Port of New
York, Defendant.

Please take notice that upon the amended complaint herein and the answer to the said amended complaint a motion will be made at a term for Motions to be held in and for the Southern District of New York at the Post Office Building on the first day of September, 1921 at ten o'clock in the forenoon of that day or as soon thereafter as counsel may be heard for a decree on the pleadings in favor of the

complainant herein and for such other and further relief as to the court may seem just and proper.

LORD, DAY & LORD,
Solicitors for Complainant,

25 Broadway, New York City.

To William Hayward, United States Attorney, Post Office Building, New York City.

105 United States District Court, Southern District of New York.

THE ANCHOR LINE (HENDERSON BROTHERS), LTD., Plaintiff,
against

GEORGE W. ALDRIDGE, Collector of Customs for the Port of New York, Defendant.

Lord, Day & Lord, (Lucius H. Beers and Franklin B. Lord, of counsel), all of New York City, solicitors for the plaintiff, for the motion.

William Hayward, United States Attorney and John Kelley Clark, Jr., Assistant United States Attorney, opposed.

MAYER, *Circuit Judge:*

This is a motion by plaintiff on the bill of complaint and answer for a decree according the relief demanded in the complaint.

The essential facts set forth in the bill and answer are not disputed and may be briefly stated as follows: Plaintiff, a British corporation, contracted with Gilmour, Thompson & Company, of
106 Glasgow, Scotland, to transport five cases of whiskey from Glasgow to Hamilton, Bermuda, there to be delivered to Burrows & Company, agents of Gilmour, Thompson & Company. These cases were shipped on plaintiff's S. S. "Cameronia" which sailed from Glasgow, July 17, 1921, and arrived at the Port of New York on July 27th.

These cases were to be transhipped in the Port of New York from the "Cameronia" to a vessel of another British corporation, the Quebec Line, running from New York to Bermuda. Both the plaintiff's vessels and the vessels of the Quebec Line are British steamships of British registry and flying the British flag, and Bermuda is a British possession.

The cases are covered by a through B/L from Glasgow to Burrows & Company in Bermuda. A B L also accompanies the shipment to New York calling for the delivery of the cases at the Port of New York to the Quebec Line.

The defendant threatened to seize these cases under instructions received from the Treasury Department dated July 8, 1921, which advised him to refuse transportation and exportation entries for all intoxicating liquors not covered by a prohibition permit. A prohibition permit is issued for liquor to be used for other than beverage

107 purposes. These instructions stated that this direction was given pursuant to an opinion of the Attorney General.

The opinion thus referred to is one issued under date of February 4, 1921, and affirmed after a rehearing on June 30th, 1921.

That opinion in effect advised that Section 3005 of the Revised Statutes, which relates to the transshipment of merchandise in bond, does not now apply to intoxicating liquors for beverage purposes and that the National Prohibition Act prohibits "in transit" shipments of such liquors touching at the ports of, or moving through, the United States, though the same originate in and are destined to foreign countries.

By order of this Court, the marshal took possession of these five cases on arrival of the "Cameronia" and holds them pending the decision of this motion.

The plaintiff for many years as a part of its business has carried liquors from Glasgow to the Port of New York, where such liquors have been transshipped to destinations in the British possessions in North America and to foreign ports in the Gulf of Mexico and South America.

This carriage of liquors by plaintiff, to be transshipped in New York, has yielded a large revenue to the plaintiff and has continued since the adoption of the National Prohibition Act.

108 If this carriage is now prevented by the stoppage of these "in transit" shipments, liquor, it is claimed, will be sent from Great Britain to the British West Indies and South American countries by other routes and plaintiff will suffer a severe loss, for which plaintiff alleges it has no adequate remedy at law. It is also claimed that if such shipments should continue to be made for transshipment in the Port of New York, there will be seizures here which will involve a multiplicity of suits.

Plaintiff contends that the Attorney General was in error in the conclusion arrived at in the opinion of February 4, 1921, and that the Secretary of the Treasury exceeded his authority in directing the defendant to stop transshipments of liquor. Plaintiff accordingly presents the shipment of these five cases from Glasgow to Bermuda as a test case and brings this suit to enjoin the defendant from stopping transshipments of this character.

The answer contains some allegations which are argumentative in character, but no question of fact is raised as to the essential features of the controversy.

Passing by any question as to whether plaintiff has sought the proper remedy and assuming for the purposes of this opinion that it has so done, it is desirable to settle as promptly as possible the fundamental questions of the case. Such disposition, when
109 ultimately had, will define the rights of the plaintiff and others similarly situated and the rights of the Government.

The Eighteenth Amendment provides as follows:

"Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the

United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation."

It will be noted that not only is transportation prohibited, but exportation as well. In other words, in order to carry out this change in national policy, the exportation of liquor for beverage purposes was prohibited, even though a citizen of the United States or a person resident in the United States possessed liquor lawfully prior to the time when the constitutional amendment became effective.

The Congress enacted the National Prohibition Act in accordance with the power conferred by the Constitutional Amendment. Section 3 of Title II of said Act provides:

"Section 3. No person shall on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this Act, and all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented.

110 Liquor for nonbeverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished and possessed, but only as herein provided, and the commissioner may, upon application, issue permits therefor: * * *

There is no provision in the National Prohibition Act which authorizes the transportation here desired in order that the transshipment sought may be accomplished.

If, therefore, "transport" is taken in its literal and ordinary sense, then the transportation which plaintiff would find necessary for its purposes is absolutely prohibited by the Act. It is said, however, and correctly that the principle of *Holy Trinity* against U. S. 143 U. S. 457 should be here applied and that the Court should look beyond the literal definition of "transport" or "transportation" to ascertain the true meaning of these terms in the light of the legislative intent.

Considering and resorting only to the Act, itself, there is nowhere any indication that the Congress intended to except this kind of transportation from the prohibition of Section 3. The Act does permit the transportation of intoxicating liquor for purposes and under safeguards in the Act set forth and, necessarily, in order to follow the mandate of the Constitution, such transportation or other dealing with intoxicating liquor must be for nonbeverage purposes.

111 The Congress had plenary power to prohibit the transportation of liquor for beverage purposes even though the liquor was destined for some place outside of the United States or territory subject to the jurisdiction thereof. It has the right to set up barriers and safeguards against the wrongful or improper diversion of intoxi-

eating liquors and it is well known in legislation that a statute will not only define offenses and prescribe the punishment therefor, but will also endeavor to surround the business or traffic dealt with in the statute with safeguards calculated to prevent offenses. It is, therefore, no answer to the provision as to prohibition of transportation to say that it must be presumed that the intended transportation would be lawfully carried out and that, therefore, the Congress did not intend to prohibit a transaction which, if carried to its orderly conclusion, could not have resulted in the use of intoxicating liquors in the United States for beverage purposes. The Act provides a method by which intoxicating liquor intended for non-beverage use may be, *inter alia*, transported and the fact that transshipment of the character here concerned is not within any of the permit provisions of the statute illustrates the point that the Congress desired to safeguard against the illegal use of liquor, destined to a foreign port, but needing transshipment within the United States, by not allowing it to be transported within the United States; and this, even though it be assumed, as it may be, that the foreign shipper intended that no part of the liquor should remain or be used in the United States for beverage purposes.

The Act in line with the constitutional amendment forbids exportation for beverage purposes. The purpose of the constitutional amendment and of the Act thus forbidding exportation was to destroy the traffic in liquor for beverage purposes and this to prevent manufacture, sale or transportation in the United States, even though by exporting such liquor it would be used for beverage purposes outside of the United States and the territory subject to the jurisdiction thereof.

The doctrine of practical construction of a constitutional provision by legislative enactments is familiar and useful. An interesting illustration of this principle in respect of the New York State Constitution will be found in *People ex rel. Einsfeld v. Murray*, 149 N. Y. 367 at page 376.

The National Prohibition Act has thus practically construed the constitutional provision as to transportation and, in any event, has not authorized the kind of transportation here desired. It may be within the power of the Congress to permit such transportation as was necessary to transship this liquor to a vessel destined for a foreign port, just as it permitted transportation of intoxicating liquors under various circumstances and for various purposes mentioned in the Act. If the Congress had this power, it declined to exercise it and, on the contrary, in simple and clear language indicated that transportation of intoxicating liquor was prohibited for any and every purpose, "except as authorized in this Act" and, to repeat, the transportation here involved is not within the statutory exception.

It is quite true, as pointed out by the learned counsel for plaintiff, that the words "transportation" and "transport" must be construed in respect of the subject matter which is being dealt with, as illustrated in *Street against Lincoln Safe Deposit Company*, U. S. Supreme Court, November 8, 1920. The Court in that case, said:

"That transportation of the liquors to the home of appellant, under the admitted circumstances, is not such as is prohibited by the section is too apparent to justify detailed consideration of *the many provisions of the Act inconsistent with a construction which would render such removal unlawful * * **" (Italics mine.)

It is urged, however, by parity of reasoning, that United States v. Gudger, 249 U. S. 373 is warrant for the proposition that the Congress did not intend by the National Prohibition Act to stop transshipments of this character. The so-called Reed amendment 114 to the Act of March 3, 1917 (39 Stat. 1058-1069) reads as follows:

"Whoever shall order, purchase, or cause intoxicating liquors to be transported in interstate commerce, except for scientific, sacramental, medicinal, and mechanical purposes, into any State or Territory the laws of which State or Territory prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes shall be punished as aforesaid: Provided, That nothing herein shall authorize the shipment of liquor into any State contrary to the laws of such State."

This case might be likened to one where a foreign vessel stops at an American port and then proceeds to a foreign port without, however, transshipping the liquor destined for a foreign port.

If, for instance, in the Gudger case, Gudger had hired a vehicle to transport the liquor from Lynchburg, Virginia to another place in Virginia and thence to North Carolina, the case would have been different from that actually considered, i. e., that Gudger had a through ticket from Baltimore, Md. to Asheville, N. C. and at no time transported the liquor into Virginia.

The Court read the statute in accordance with its normal meaning and intent and with its simple language and said:

"Under this state of facts we think the court was clearly right in quashing the indictment, as we are of opinion that there is no ground for holding that the prohibition of the statute against transporting liquor in interstate commerce 'into any State or Territory the laws of which State or Territory prohibit the manufacture' 115 etc., includes the movement in interstate commerce through such a State to another. No elucidation of the text is needed to add cogency to this plain meaning, which would however be reinforced by the context if there were need to resort to it, since the context makes clear that the word 'into,' as used in the statute, refers to the State of destination, and not to the means by which that end is reached, the movement through one State as a mere incident of transportation to the State into which it is shipped."

The Gudger case is quite different in principle from that at bar where any transportation is prohibited except that which is definitely excepted.

It is urged, however, that Section 3005 of U. S. Revised Statutes has not been repealed. That Section provides:

"All merchandise arriving at any port of the United States destined for any foreign country may be entered at the custom-house, and conveyed in transit, through the territory of the United States, without the payment of duties, under such regulations as to examination and transportation as the Secretary of the Treasury may prescribe."

Title II of Section 35 of the National Prohibition Act provides:

"All provisions of law that are inconsistent with this Act are repealed only to the extent of such inconsistency and the regulations herein provided for the manufacture or traffic in intoxicating liquor shall be construed as in addition to existing laws."

Repeals by implication are not favored, but where a later statute is plainly inconsistent with a prior statute, the later statute necessarily repeals the prior statute.

116 Section 3005 was a revenue act or, in other words, it exempted from customs duties, merchandise which otherwise, would have been subject to duty. In the case at bar, the liquor was not subject to duty. It could not be imported. The introduction into this country from some foreign port of liquor for beverage purposes has no relation to revenues. Such liquor could not be lawfully introduced into this country because of the change in the national policy.

The very reason, therefore, for Section 3005 disappears so far as affects intoxicating liquor for beverage purposes.

In *United States v. Yuginovich*, U. S. Supreme Court, June 1, 1921, the court said:

"These statutes have only been part of the Federal internal revenue legislation, and were passed under the authority of the taxing power conferred upon Congress by the Constitution of the United States. At the time of their enactment it was legal, so far as the Federal Government was concerned, to manufacture and sell ardent spirits for beverage purposes. The Government derived large revenue from taxing the business, which it sought to realize and protect by the system of laws of which the sections in question were a part. This policy was radically changed by the adoption of the Eighteenth Amendment to the Federal Constitution, and the enactment of legislation to make the Amendment effective. The Eighteenth Amendment in comprehensive and clear language prohibits the manufacture or sale of intoxicating liquors in the United States for beverage purposes, and confers upon Congress the power to enforce the Amendment by appropriate legislation. To this end, Congress passed a national prohibition law known as the Volstead Act. 41 Stat. 305. It is a comprehensive statute intended to prevent the manufacture and sale of intoxicating liquors for beverage purposes * * *

117 It is, of course, settled that repeals by implication are not favored. It is equally well settled that a later statute repeals former ones when clearly inconsistent with the earlier enactments. *United States v. Tynen*, 11 Wall. 88 * * *

The concluding phrase of Section 35 by itself considered is strongly indicative of an intention to retain the old laws. But this section must be interpreted in view of the constitutional provision contained in the Eighteenth Amendment and in view of the provisions of the Volstead Act intended to make that Amendment effective * * *

In other words, Section 3005 and Section 3 of the National Prohibition Act are inconsistent and the former cannot stand. If the Congress has the power to permit this transshipment, it must indicate its purpose so to do and this it has not done.

Finally, it is said that the transshipment is allowable within the Treaty rights of the Treaty of Washington proclaimed July 4, 1871 between the United States and Great Britain. Presidents Cleveland and Harrison held that Article XXIX of the treaty was abrogated.

A court of first instance will not take a contrary view.

Nor does the case come within the Treaty of December 22, 1815.

An elaborate discussion by this Court of these treaties is deemed not necessary.

118 Motion denied and bill dismissed with costs October 21, 1921.

Circuit Judge.

119 At a Stated Term of the District Court of the United States for the Southern District of New York Held in the Court-rooms Thereof, at the Post Office Building, in the Borough of Manhattan, City of New York, on the 31 Day of Oct., 1921.

Present: Honorable Julius M. Mayer.

In Equity.

22—52.

THE ANCHOR LINE (HENDERSON BROTHERS), LTD., Complainant,
against

GEORGE W. ALDRIDGE, Collector of Customs for the Port of New York,
Defendant.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was

Ordered, adjudged and decreed that the bill of complaint herein be dismissed and defendant have judgment against the complainant for his costs to be taxed, and it was further

Ordered, adjudged and decreed that the order to show cause, entered herein on the 18th day of July, 1921, restraining the defend-
120 ant, George W. Aldridge, his agents, servants and subordinates from seizing, disturbing, removing, or in any way interfering with the wines and intoxicating liquors or any of them referred to in said order, is hereby vacated and dissolved, and it was

Further ordered, adjudged and decreed that the United States Marshal in and for the Southern District of New York be and he hereby is directed to continue to hold in his custody for safe keeping the five cases of whiskey consigned by Gilmour Thompson and Company of Glasgow, Scotland, to Burrows & Company, of Hamilton, Bermuda, as described in the bill of complaint herein, pending the determination of an appeal herein to the Supreme Court of the United States and until the entry of the final decree herein upon the mandate from said Court.

JULIUS M. MAYER,
U. S. C. J.

Consented to as to form. Notice of settlement waived.
Oct. 31, 1921.

LORD, DAY & LORD,
Solr. for Complainants.

121 United States District Court, Southern District of New York.

THE ANCHOR LINE (HENDERSON BROTHERS), LTD., Complainant,
against

GEORGE W. ALDRIDGE, Collector of Customs for the Port of New York,
Defendant.

The complainant above named, The Anchor Line (Henderson Brothers) Ltd., a corporation conceiving itself aggrieved by the final decree made and entered in the above entitled cause on the 31st day of October, 1921, does hereby appeal from such final decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, from which it appears that this cause is appealable directly from this court to the said Supreme Court of the United States under Section 238 of the Judicial Code and said The Anchor Line (Henderson Brothers) Ltd., prays that it be allowed this appeal and that a transcript of the record, papers, and proceedings upon which said final decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

122 Dated, New York, November 15th, 1921.

LORD, DAY & LORD,
Solicitors for Complainant.

Office & P. O. Address: 25 Broadway, Borough of Manhattan,
City of New York.

Appeal allowed.
JNO. C. KNOX,
Judge.

123 By the Honorable John C. Knox, one of the United States District Judges for the Southern District of New York, in the Second Circuit, to George W. Aldridge, Collector of Customs for the Port of New York, Greeting:

You are hereby cited and admonished to be and appear before the United States Supreme Court, to be holden in the City of Washington, District of Columbia, on the 16th day of December, 1921, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Southern District of New York, wherein The Anchor Line (Henderson Brothers) Ltd. is complainant-appellant and you are defendant-appellee to show cause, if any there be, why the final decree in said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 17th day of November, in the year of our Lord One Thousand Nine Hundred and twenty-one, and of the Independence of the

124 United States the One Hundred and Forty-Sixth.

JNO. C. KNOX,

*United States District Judge
for the Southern District
of New York, in the Sec-
ond Circuit.*

125 United States District Court, Southern District of New York.

THE ANCHOR LINE (HENDERSON BROTHERS), LTD., Complainant,
against

GEORGE W. ALDRIDGE, Collector of Customs for the Port of New York,
Defendant.

Now comes the complainant, The Anchor Line (Henderson Brothers) Ltd., a corporation, and files the following assignment of errors upon which it will rely on its appeal from the judgment of decree in equity entered on the thirty first day of October, 1921:

First. That the Court erred in dismissing the bill of complaint herein.

Second. That the Court erred in denying the petition for an injunction.

Third. That the Court erred in holding that Section 3005 of the Revised Statutes has been repealed by act of Congress of

126 October 28th, 1919, known as the National Prohibition Act.

Fourth. That the Court erred in holding that Section 3005 of the Revised Statutes which relates to the transshipment of merchandise in bond does not apply to intoxicating liquors for beverage purposes, although they are to be used without the United States, and that

the National Prohibition Act prohibits "in transit" shipments of liquor for beverage purposes touching at ports of or moving through the United States, though the same originate in and are destined to foreign countries.

Fifth. That the interpretation of the Act of Congress of October 28th, 1919, known as the National Prohibition Act, by the Court, renders said Act unconstitutional and void, and that the Court erred in so interpreting said Act.

Sixth. That the Court erred in failing to hold that Congress was without power under the Eighteenth Amendment to the Constitution of the United States to prohibit the transshipment of liquor in ports of the United States or moving through the United States when the same originate in and are destined to foreign countries.

127 Seventh. That the Court erred in holding that the Eighteenth Amendment to the Constitution of the United States prohibits the transshipment in ports of the United States of shipments of wines and intoxicating liquors originating in and destined to foreign countries.

Eighth. That the Court erred in holding that Title II of the Act of Congress of October 28th, 1919, known as the National Prohibition Act, prohibits the transshipment of liquor for beverage purposes touching at ports of or moving through the United States, though the same originate in and are destined to foreign countries.

Ninth. That the Court erred in failing to hold that transshipment in ports of the United States of shipments of wines and intoxicating liquors originating in and destined to a foreign country is permitted by the treaties between the United States and Great Britain, particularly the treaty of May 8th, 1871, ratified June 17th, 1871, and proclaimed July 4th, 1871, and particularly Article XXIX thereof.

128 Wherefore, complainant-appellant prays that the said decree of the United States District Court for the Southern District of New York be reversed, and an injunction granted the complainant as prayed for in its said bill of complaint herein, and for such other and further relief as to the Court may seem just and proper.

Dated, New York, November 15th, 1921.

LORD, DAY & LORD,
Solicitors for Complainant-Appellant.

Office & Post Office Address, 25 Broadway, Borough of Manhattan, City of New York.

129 In the District Court of the United States for the Southern
District of New York.

THE ANCHOR LINE (HENDERSON BROTHERS) LTD., Complainant,
against

GEORGE W. ALDRIDGE, Collector of Customs for the Port of New
York, Defendant.

It is hereby stipulated pursuant to Rule 8 of the Supreme Court of the United States that the following papers shall constitute the transcript of record on appeal herein to the Supreme Court of the United States from the final decree entered in the above entitled cause on the 31st day of October, 1921.

1. Subpœna.
 2. Bill of complaint and order to show cause dated July 18, 1921.
 3. Amended bill of complaint.
 4. Answer.
 5. Order of July 25, 1921 directing the United States Marshal
130 to take into his custody for safe-keeping five cases of whiskey
consigned by Gilmour, Thompson & Company, Glasgow,
Scotland, to Burrows & Company, Hamilton, Bermuda.
 6. Notice of Motion of complainant for judgment on the
pleadings.
 7. Opinion of Mayer, C. J.
 8. Final decree entered herein October 31, 1921.
 9. Petition on appeal and allowance.
 10. Citation.
 11. Assignment of Errors.
 12. Stipulation as to sufficiency of record.
- Dated, New York, November 15th, 1921.

LORD, DAY & LORD,
Solicitors for Complainant.

Office & P. O. Address, 25 Broadway, New York City.

WM. HAYWARD,
United States Attorney, Solicitor for Defendant.

Post Office Building, New York City.

131 In the District Court of the United States for the Southern District of New York.

THE ANCHOR LINE (HENDERSON BROTHERS) LTD., Complainant,
against

GEORGE W. ALDRIDGE, Collector of Customs for the Port of New York, Defendant.

It is hereby stipulated and agreed by and between the solicitors for the respective parties hereto that the foregoing are true and complete transcripts of the pleadings, the Order to Show Cause, the Order of July 25, 1921, Opinion of Mayer, Circuit Judge, and the Final Decree entered herein on October 31, 1921, and of the application of the complainant for, and the allowance of an appeal to the Supreme Court of the United States.

Dated, New York, November 15th, 1921.

LORD, DAY & LORD,
Solicitors for Complainant.

Office & P. O. Address, 25 Broadway, New York City.

WM. HAYWARD,
United States Attorney, Solicitor for Defendant.

Post Office Building, New York City.

132 UNITED STATES OF AMERICA,
Southern District of New York, ss.

THE ANCHOR LINE (HENDERSON BROTHERS), LTD., Complainant,
vs.

GEORGE W. ALDRIDGE, Collector of Customs for the Port of New York.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 22d day of November in the year of our Lord one thousand nine hundred and twenty-one and of the Independence of the said United States the one hundred and forty-sixth.

[Seal of District Court of the United States, Southern District of N. Y.]

ALEX. GILCHRIST, JR.,
Clerk.

133 [Endorsed:] In Equity. 22-52. United States Supreme Court. The Anchor Line (Henderson Brothers) Ltd., Complainant-Appellant, against George W. Aldridge, Collector of Customs for the Port of New York, Defendant-Respondent. Record on Appeal. Lord, Day & Lord, Solicitors for Complainant-Appellant, 25 Broadway, New York City.

Endorsed on cover: File No. 28,594. S. New York D. C. U. S. Term No. 639. The Anchor Line (Henderson Brothers), Ltd., appellant, vs. George W. Aldridge, collector of customs for the port of New York. Filed December 9th, 1921. File No. 28,594.

(5449)